

March 28, 2005

Ms. Kathleen M. Finn  
United States Department of Agriculture  
Marketing Order Administration Branch, Fruit and Vegetable Programs  
1400 Independence Avenue SW  
Stop 0237  
Washington, DC 20250-0237

**Re: Repeal of Anti-Fruit Dumping Reforms---**  
Proposed Rules, Federal Register, Vol. 70.  
No. 18, January 28, 2005, Proposal Number 13a and 13b

Dear Ms. Finn:

Consumers Union, nonprofit publisher of *Consumer Reports*, submits these comments in strong opposition to the proposed amendments to 7 C.F.R. sections 916.52 and 917.41 contained in Proposals 13a (nectarines) and 13b (peaches) of the January 28, 2005 Notice of Proposed Rulemaking. These proposals are contrary to consumers' interest, will impede the availability of fresh fruit to low-income communities, and in effect will repeal landmark utility grade fruit reforms of the 1990s. Consumers Union strongly urges withdrawal of these proposals.

The last time a government marketing order created a fruit cartel similar to the peach/nectarine cartel in Proposal Number 13a and 13b, it triggered a statewide consumer/grower revolt in California. Utility grade reforms in the 1990s legalized the sale of perfectly healthy, delicious, fruit that didn't meet the higher cosmetic standards mandated by industry-written regulations to reduce the supply of fresh fruit during large harvest years. These reforms made tons of less expensive fruit available to consumers and prevented the dumping of thousands of tons of badly needed fresh fruit each year. Utility grade agricultural reforms became the first consumer-friendly changes in fruit marketing since the original Marketing Agreement Act of 1937.

It happened more than a decade ago. Amid mountains of rotting fruit, Consumers Union launched a joint consumer/grower revolt against government restrictions on the sale of less expensive, smaller, sometimes slightly blemished, but perfectly healthy and nutritious fruit that met consumer demand. These regulations were quickly labeled "fruit dumping regs" by the media because they forbid the sale of all but the most cosmetically attractive fruit and encouraged the worst kind of waste and inefficiency. Massive fruit dumping across much of the San Joaquin Valley stirred public anger across the country.

These de facto price fixing regulations had been used for years when harvests were large and some growers feared lower prices. Simply to "stabilize prices," cosmetic restrictions

on fruit size and appearance made it illegal to sell the kind of fruit that had been available the year before. "Stabilize" became a fruit cartel euphemism for keeping prices artificially high. Hungry kids ate canned peaches in government subsidized school lunch programs or simply went hungry while tons of fresh fruit rotted in the sun. Such spectacles of waste and abuse, exposed by consumer groups outraged the public.

In late 1993, some plum growers, angry with the federal government for refusing to support anti-consumer restrictions on the sale of fresh fruit, went to the then-Governor of California and convinced his administration to promulgate price fixing restrictions on the sale of fruit. A statewide protest exploded. Retailers defied the regulations and sold "cosmetically challenged" plums to willing buyers as news crews recorded the sale of the "contraband plums." To demonstrate the quality of the so-called blemished fruit, tons of "red-tagged" ---forbidden for sale---plums were handed out to homeless shelters and food banks, and cases were delivered to the offices of members of the California Legislature.

A bipartisan bill (California Assembly Members Ross Johnson and Phil Isenberg) was introduced that barred the state from prohibiting or limiting "the sale of fresh edible fruit." Backed by consumer groups, growers and the California Medical Association, the legislation was poised for approval when the plum cartel supporters capitulated, backed off their proposed blemished fruit regulations, and agreed to promulgation of the nation's first utility grade reforms. Now your proposed regulations, Proposal 13a and 13b, would in effect re-write the utility grade reforms and re-authorize the old price raising restrictions consumers fought against a decade ago. (See some of the attached news stories for sampling of public reaction to regulations almost identical to Proposals Number 13a and 13b in your proposed regulations.<sup>1</sup>)

The history of utility grade reforms is a story about increased shipments of fresh fruit to consumers who could never afford the higher cost, but cosmetically perfect fruit. It is important to remember that size and less than perfect appearance have nothing to do with the basic healthy delicious quality of these plums, peaches and nectarines. The utility grade reforms allow consumers to buy and eat fresh, delicious plums, peaches and nectarines that had been kept from the fresh fruit market. Consumers have bought millions of pounds of healthy, delicious fruit that would have been destroyed without these regulations. Many lower income consumers might have been denied access to this healthy product if this less expensive fruit had not been available. But now the supporters of fruit dumping and the destruction of agricultural products to prop up prices are back.

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<sup>1</sup> A Sacramento Bee editorial (April 11, 1994) summed up reaction: "During the last two summers, millions of pounds of good, edible fruit rotted in California orchards because the law made it illegal for willing growers to sell it to willing buyers. *The mechanisms for creating this waste were federal marketing orders, under which growers gang up to restrict the supply of fruit to hold up prices....*"[Emphasis added] An editorial in The San Diego Union Tribune entitled "Plum Crazy" labeled the fruit dumping supporters "a plum cartel": "in the spirit of Ebenezer Scrooge, the state Food and Agriculture Department moved closer this week to adopting a marketing order that will raise the price of plums for consumers."

Ten years ago, the opponents of utility grade reforms denied they wanted to fix prices. However, now the very language of Proposal 13a and 13b makes its brazen government price fixing intent obvious:

“The Secretary [of Agriculture] shall [upon recommendation of the Commodity Committee]... limit, during any period or periods and/or ...by specific market destination, the total quantity of any grade, size, quality, maturity or pack...[and]; Limit the shipment of any variety or varieties of fruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level....” Proposed Section 917.41(a)(1)-(2)

The language of the proposed regulation would allow price manipulation at “market destinations” like San Francisco, Los Angeles, or New York.<sup>2</sup> At your February 15<sup>th</sup> public hearing in Fresno, the proponents of these proposed regulations, in order to make their argument more politically palatable, testified about the need to restrict Japanese shipments to maintain high prices:

***“The Japanese are known for paying high prices for fruit.*** In order to charge high prices for the product sent there must be very good quality. For the Committees to develop such a market and then retain it based on sending very good quality to the market, ***it may be necessary for the Committees to restrict shipments*** to those certain grades that are recognized as maintaining quality fruit. ***The Japan market is not one where the Industry would want to send Utility Grade fruit.*** “ [Emphasis added.]<sup>3</sup>

In fact, twice during his brief testimony, Mr. Harold McClarty, a member of the Peach Commodity Committee and the Commodity Control Committee [of the federal marketing order] publicly admitted he and his supporters want Proposal 13 in order to restrict fresh peach and nectarine shipments: “The [Marketing Order] Committees believe there may

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<sup>2</sup> Proposals 13a and 13b fail to define “market destination.” By adding the phrase “and/or for peaches only, by specific market destination” to sections (916.160 and 917.178), they give the Peach and Nectarine Marketing Orders the authority to suspend utility grade fruit shipments to domestic as well as international destinations. As stated by Mr. Harold McClarty, a member of the Peach Commodity Committee and the Commodity Control Committee [of the federal marketing order], at your recent public hearing, this regulatory change may be needed to maintain high prices.

<sup>3</sup> Testimony of Mr. Harold McClarty, a member of the Peach Commodity Committee and the Commodity Control Committee [of the federal marketing order], Fresno, California Hearing, February 15, 2005;

be seasons in the future when specific destinations should have specific regulations for the market.”<sup>4</sup>

In other words, like the defeated plum regulation a decade ago, the proposed federal peach marketing order rests on the erroneous assumption that unwary consumers in Tokyo, San Francisco and Los Angeles need “protection” from the shipment of “poor quality” utility grade fruit that might jeopardize high fruit prices for the most cosmetically attractive fruit. If the nation’s auto producers had met in Fresno on February 15, 2005 and agreed to restrict shipments of small economical vehicles to destinations like Los Angeles, San Francisco or Tokyo to maintain high prices, the participants might be on their way to prison for violation of state and federal antitrust laws. However, because peach and nectarine pricing is part of the archaic 1937 federal law, Mr. McClarty and the other participants appear to have a de facto antitrust exemption legalizing price fixing. Should USDA move forward with these proposed regulations, an amendment should be added to require compliance with state and federal anti-trust law. This proposed peach/nectarine cartel should not have an exemption from price fixing prosecution.

Based on the foregoing analysis, therefore, USDA’s Marketing Order Administration Branch, Fruit and Vegetable Programs should immediately drop Proposals 13a and 13b. No notice was directly given to consumer organizations, nutrition programs, school lunch program advocates, public health officers fighting the national obesity epidemic, and the media about the price implications of these wasteful and inefficient regulations. Should USDA decide to finalize these proposals, and in effect repeal the more than ten-year-old-anti-dumping reforms, Consumers Union requests:

Full notification of the price fixing implications of the proposed peach/nectarine regulations and three public hearings (Los Angeles, San Francisco, and Sacramento) to solicit public testimony on these regulations;

- 2) Notification to the Health and Agriculture Committees of the California Legislature that have jurisdiction over California’s nutrition programs that regulations allowing for the elimination of the utility grade reforms are being considered by USDA;
- 3) An amendment stating: “Nothing in these regulations constitutes ‘State Action’ or prevents the full application of federal and state anti-trust laws or the application of any other existing laws aimed at preventing combinations in restraint of trade or any other currently illegal activity.”
- 4) An amendment to require the Peach and Nectarine Marketing Orders to use up to 20% of their industry assessments to encourage the replacement of canned and frozen fruit in free and reduced price school lunch programs with at least utility grade fresh peaches and nectarines.

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<sup>4</sup> Id.

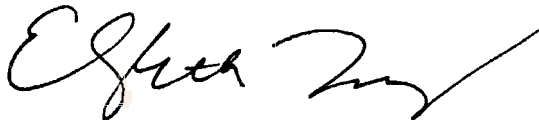


- 5) An amendment to require that all committees established by these regulations shall have a majority of members who are consumer representatives who do not have any direct or indirect relationship with the agricultural industry, either growers, packers, handlers, distributors, agricultural co-ops, food distributors, food retailers or other industry groups. Such consumer representatives shall be selected from areas that represent the broad diversity of the consumers of the commodity.
- 6) An amendment to require that each and every committee recommendation to the Secretary of Agriculture shall contain an independent analysis of the impact the recommendation would have on the consumers of the United States, including, but not limited to, the impact on consumption of the relevant commodity by children and the elderly, the impact on the price of the commodity to consumers, the impact on retail sales, the impact on solid waste disposal, the impact on pesticide use and the impact on school, summer and other feeding programs.

Since the promulgation of utility grade reforms on the federal and state level, the public, the California Legislature, and Governor Arnold Schwarzenegger have moved to fight obesity, improve school lunch programs, and enact nutrition programs to increase the consumption of fresh fruit and vegetables. Regulations that promote fruit dumping and waste, while millions of children are denied the access to fresh fruits and vegetables, would be a disgrace.

Taxpayer money is being spent all over the country to encourage people to eat more fresh fruits and vegetables in order to attain better health. The United States Department of Agriculture should not waste valuable governmental resources trying to limit the sale of fresh wholesome fruit to prop up prices. The government should be encouraging a more efficient distribution of precious fruit and vegetable resources. Consumers want the power to make choices about whether to buy cosmetically perfect fruit or less expensive, just as delicious, slightly less attractive fruit. Leave it to consumers. Utility grade reforms are working.

Sincerely,



Elizabeth M. Imholz, Director  
West Coast Office  
Consumers Union of U.S., Inc.

cc: Governor Arnold Schwarzenegger  
Secretary of Food and Agriculture A.G. Kawamura



BY DON LEBARON/SPECIAL TO THE CHRONICLE

Growers have been forced to dump fruit that doesn't meet size standards endorsed by the government

## Grower Faces Unfruitful Predicament

U.S. threatens big fines for sales of undersize peaches and nectarines

By John Eckhouse  
Chronicle Staff Writer

Trying to make a profit selling small fruit to low-income consumers could cost a Fresno-area grower a lot of money.

U.S. Attorney George O'Connell has sued Gerawan Farming, a family-owned fruit grower, asking a federal court to prevent it from selling more small peaches and nectarines destined for mom-and-pop markets in central Los Angeles.

The sales enabled Gerawan to avoid dumping or donating to charity almost 100,000 pounds a week of peaches and nectarines.

The fruit was slightly smaller than allowed by standards established by industry committees composed of growers and packers. U.S. Agriculture Secretary Edward Madigan approved the

standards, giving them the force of federal law.

In the lawsuit filed Friday, O'Connell asked a federal district court in Fresno to issue a preliminary injunction ordering Gerawan Farming to comply with the minimum size provisions or pay a fine of \$100 per carton for any future sales of illegal fruit. That compares to a wholesale price of about \$9 per carton for the small fruit and amounts to a penalty of about \$150,000 per truckload.

"We wanted to have a fine sufficiently serious to convince Gerawan to follow the federal standards he has consistently flouted," said Daniel Bensing, assistant U.S. attorney for the Eastern District of California.

Gerawan said the fruit it sold was approximately a sixteenth of an inch smaller in diameter than the minimum size permitted — and was the same size

as Georgia peaches that can be sold legally.

"The public would be a lot better served if the United States Attorney spent tax dollars going after drug dealers and child rapists than me," said Dan Gerawan, who runs the company's packing operation.

But some in the industry say he is a proper target.

"Gerawan is trying to profit by not observing the standards set up by the rest of the industry. That is not fair — that is a criminal act," said Mark Lewis, president of Richland Sales Co. and a member of the nectarine committee.

The minimum-size standards will force California growers to either dump or give away to charities about 500 million peaches and nectarines this year. Growers and packers also can sell

.....CONTINUED ON REVERSE →



# End to Restrictions On Fruit Sales Urged

Millions of nectarines, peaches are dumped

By Carolyn Lochhead  
Chronicle Washington Bureau

Washington

Members of Congress have eaten two boxes of contraband nectarines in their private Capitol Hill dining room, courtesy of a California grower who is under threat of federal injunction and heavy fines for selling the same fruit to ordinary consumers.

Yesterday, George Miller, the Martinez Democrat who distributed the illegal fruit to his colleagues last week, sent a letter to Secretary of Agriculture Edward Madigan demanding that the federal government abolish the regulations that force growers to destroy millions of pounds of fresh fruit each year rather than sell it to consumers.

If the nectarines were "good enough for members of Congress to eat," Miller declared, "I figure they're good enough for senior citizens, students and other consumers."

The USDA administers and enforces the rules. But the lawmakers who ate the fruit are members of the same body that routinely renews the Depression-era laws forbidding its sale.

The rules, known as marketing orders, attempt to force up the price of nectarines, peaches, navel oranges, almonds, raisins and other produce by reducing their supply. Committees of growers, backed by federal police power, administer the orders that dictate, among other things, that nectarines and peaches must be of a certain diameter to be sold.

If the fruit is too small, it must be destroyed, given away or sold at roadside stands located on the grower's land. The prescribed diameter can vary each year, depending on the size of the crop and how many nectarines and peaches the committee believes it must destroy in order to boost prices sufficiently.

This year, California growers

are expected to dump 500 million nectarines and peaches.

Dan Gerawan, the Reedley grower who sent Congress the fruit, violated federal law earlier this season by selling undersized nectarines to inner-city residents of South Central Los Angeles. Gerawan earlier told The Chronicle that his workers are dumping 100,000 pounds of the fruit each week on an unused dirt road near Reedley, where it is left to rot in the sun.

Some California growers defend the rules as vital to prevent "market chaos." Georgia peach growers, however, are not subject to the rules. Nor are Florida orange growers. Neither group complains of chaotic markets.

Miller told Madigan that the orders "hamper open competition among farmers, cheat consumers and distort the market."

"What many people do not understand," Miller's letter said, "is that thousands of farmers also vigorously oppose these orders, which allow their competitors to tell them how much fruit they can legally sell."

Miller's letter was signed by 18 other members ranging from free-market Republican Dick Armey of Texas to liberal California Democrats Fortney (Pete) Stark and Ronald Dellums, both representing Oakland.



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Allen's P. C. B Est. 1888

## AGRICULTURE

# 1402 Grocery chain defies law, sells blemished plums

By Ray Sotero

Record Capitol Bureau

SACRAMENTO — An 88-store grocery chain received public backing from a consumer-protection group Monday for illegally selling imperfect plums, an act that would be made legal under a controversial proposal pending in the Legislature.

"If given the opportunity, the public will stop the destruction of fruit to prop up prices," said Harry Snyder, West Coast regional director for Consumers Union.

Snyder and several other groups, including the California Medical Association along with local community-help groups, are backing a campaign begun Monday by Cheaper! stores to sell imperfect plums in defiance of state law.

The blemished plums come from Dinuba grower Dan Gerawan and are sold for 10 cents

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*"If given the opportunity, the public will stop the destruction of fruit to prop up prices."*

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— Harry Snyder,

regional director, Consumers Union

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each or 29 cents a pound. That compares to 79 cents a pound for the usual plums sold through marketing orders that went into effect within the past year.

"It's a really great value for the customer; I bought three today. They tasted great," said Ned Roscoe, president of the Bay Area firm that manages Cheaper! stores. Outlets carry the name of the local owner as the first part of its title. In Sacramento, for example, it's Sam's Cheaper! Store.

However, the industry-backed order is being defied by mostly smaller growers who said it will lead to the destruction of 52 mil-

lion plums annually. They believe there is a market for the average 20 percent of their crop that is too small, blemished or otherwise unsaleable and sold at a reduced price.

Detractors of the bill, AB 3837 by Assemblymen Phil Isenberg, D-Sacramento, and Ross Johnson, R-Fullerton, fear the move will lower both prices and quality standards for all fruit and likely will force smaller growers into bankruptcy. The measure has been stalled in the Legislature for months.

If successful, however, the move to sell imperfect fruit can be expected to move to other

commodities, such as peaches, strawberries and others.

"This is nothing more than a last-ditch effort to shove (substandard) fruit down the throat of consumers," said Carla Agar, a spokeswoman for the California Department of Food and Agriculture. "This amounts to food terrorism."

Agar said the department is considering legal action against growers but first wants to see how many plums are being sold.

To emphasize the edibility of the fruit, supporters of the bill delivered 4-pound bags of plums to the offices of lawmakers who either voted against the bill or abstained. Those include Assemblymen Dean Andal, R-Stockton, and Larry Bowler, R-Elk Grove.

The Stockton area has two Cheaper! stores, one in Manteca and the other in Galt.

# Farmers in Big Food Fight

Supporters claim  
marketing orders  
smooth supplies  
— critics call them  
wasteful, costly

BY JOHN ECKHOUSE

*Chronicle Staff Writer*

The government threatened to penalize David Roth last winter if he shipped more navel oranges than the quota set by his competitors.

Jack Shafer threw half his nectarine crop away because it was considered too yellow to be ripe by a government-approved color standard — even after the fruit started rotting on his trees.

Cloyd Angle estimates he lost \$2 million during the 1991 almond harvest when a committee of his peers ordered him to use 1.6 million pounds of the nuts for cattle feed, almond butter or airline snacks rather than sell it at higher prices to his regular customers.

While the U.S. government generally opposes industry cartels that meet to divvy up market share or withhold products to drive up profits, that's not the case in agriculture.

Federal laws permit industry committees — generally fewer than a dozen growers and packers — to regulate the sale of their produce. The secretary of agriculture routinely signs the committee recommendations, turning them into law.

Marketing orders are just one of the Depression-era laws passed to protect farmers, and most of them provide only for joint research or advertising. But critics say half a dozen actually keep food off the market, driving up consumer prices and farm profits.

"It's un-American to get away from the laws of supply and demand," said John Kashiki, chairman of fruit packer Kash Inc. in Parlier (Fresno County), who spent time in an Arizona relocation camp during World War II because of his Japanese heritage.

"We don't mind most parts of the marketing order, but we don't want to be told how much we can ship by our



BY DON LEBARON/FOR THE CHRONICLE

Fresno County orange grower David Roth walked among his trees laden with Valencia oranges





Morro Bay City Councilmember Ben Luna displays undersized peaches which were donated to the San Luis Obispo Homeless Shelter Tuesday as the result of his efforts. After reading that farmers were being forced to allow tons of small peaches to rot because of USDA marketing regulations, Luna urged the council to support a resolution condemning the USDA regulations. A Reedley farmer sent the city four cases of the undersized peaches to show his appreciation for the city's support. 'This is an example of perfectly edible fruit that would have gone to complete waste because USDA marketing orders prohibit the sale of such fruit due to its size,' Luna said Tuesday. Luna said U.S. Rep. Leon Panetta has agreed to look into the issue.

Photo by Coleen Boridy

# The Fresno Bee

Thursday, August 4, 1994 A17

## Plum grower to quit selling blemished fruit

■ Dan Gerawan says it's not worth the time and expense to fight the state.

By Pamela J. Podger  
Bee Capitol bureau

SACRAMENTO — Fresno County grower Dan Gerawan said Wednesday he would quit selling contraband plums after state officials scared him straight by visiting his Reedley offices.

In defiance of a Depression-era farm policy, Gerawan this week has sold an undisclosed amount of scarred, blemished plums to a discount grocery chain.

After state investigator Bryce Jasper said fines up to \$2,500 a box and criminal prosecution were possible, Gerawan decided his illegal sales to 83 Cheaper! Stores in Northern California were too costly.

"I multiplied the fine by the amount I've shipped and I scared myself. The total fine was astronomical and it isn't worth continuing," said Gerawan, who would only confirm a 100-box shipment — meaning fines of about \$25,000.

Jasper, who visited Gerawan on Tuesday, said state officials were still investigating Gerawan's contraband shipments.

Deputy Secretary A.J. Yates said the California Department of Food and Agriculture would reach a decision on sanctions against Gerawan today.

Gerawan, whose family farm is one of the largest suppliers of plums in the world, has provoked the ire of farm groups for his actions. There are 1,386 plum growers in California, said state officials.

"This kind of divisiveness isn't good for the industry as a whole," said Karen Barrett Ross of the Agricultural Council of California.

Assemblyman Cruz Bustamante, D-Fresno, said Gerawan has resorted to questionable tactics in his efforts to alter the industry's plum quality standards.

But Gerawan said his actions have proved there is a robust market for imperfect fruit that doesn't meet the "state's beauty standards."

With more than 52 million plums left to rot in the fields or fed to cattle each year, Cheaper! Stores president Ned Roscoe said the state action was a "crying shame."

"If there are any other brave souls out there, we'll buy plums from them," Roscoe said. His Benicia-based chain alone could sell about 2.5 tons each day, he said.

Roscoe said his chain would print a summary of the plum skirmish on 1 million grocery bags.

"It's news that the government is spending time and money trying to stop this. We'll give people the facts so they could check it out for themselves," Roscoe said.

Gerawan said it isn't worth taxpayer money to investigate blemished fruit.

"This guy drove all the way down from Sacramento to investigate cosmetically challenged plums. That is what he did that day," Gerawan said.

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Bee staff writer Will McClatchy contributed to this report.

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## Illegal fruit goes on sale to test old policies, cancel 'monopoly'

By Pamela J. Podger  
Bee Capitol bureau

SACRAMENTO — Illegal plums on sale today at a discount food chain will test a Depression-era farm policy and could prompt state sanctions against a Fresno County grower.

Cheaper Stores owner John Roscoe said he is selling the contraband fruit at his discount stores to end the "monopoly" between government and agriculture that keeps food prices "artificially high" at consumer's expense.

At a Capitol news conference Monday, Roscoe denied trying to provoke legal action by purchasing 100 36-pound bags of fruit from Dan Gerawan, whose Dinuba family farm is one of the largest plum suppliers in the world.

"I don't consider it contraband fruit, but fruit that is ready for market," said Roscoe, who said the illegal plums will be sold at his 83 outlets in Northern California.

Roscoe said he expects some action from state officials.

But Carla Agar of the California Department of Food and Agriculture said officials might not impose sanctions.

"It may be such a small amount of fruit it isn't worth our

effort, frankly," Agar said. "I don't think it will sell. I think it will sit on the shelves like the poorer grade fruit."

The plums will sell at Cheaper stores for 10 cents each or a 4-pound bag for \$1.19 — roughly 29 cents a pound. Roscoe said Safeway Stores recently sold plums at 79 cents a pound.

Bags of the contraband fruit will be delivered to Assembly members who opposed or abstained from voting on a bill allowing sales of small, blemished fruit, now banned by the Depression-era rules.

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## Protecting Us From Fruit

Every summer, tons of edible fruit are dumped to rot in orchards instead of being shipped to grocery stores. It's the law. Federal marketing orders for some fruits require that small or blemished fruit be dumped rather than sold. Supposedly this protects consumers from inferior fruit. It is, instead, a transparent attempt to prop up the price of fruit by limiting the amount that comes to market.

Two members of the Assembly, Ross Johnson — and Phil Isenberg — had a simple insight: This is nuts. They drafted a simple bill, AB3837. It says: "The state shall not prohibit or other-



CHUCK THOMAS

## Rubber duckies and ugly plums

■ When you go to the market, state law saves you from being confronted by ugly fruit. The state regulates the size, color and quality of some of the fruit that can be sold. What happens to fruit that doesn't pass the physical? Since it can't be sold, it's allowed to rot.

Some legislators thought all that fruit shouldn't go to waste just because it isn't pretty enough. They introduced a bill to allow the unprime fruit to be sold — at unprime prices — to agencies that feed the poor. But after plaintive pleas from the agricultural industry, the bill died on the vine.

Since all fruit isn't regulated, Assemblyman Phil Isenberg of Sacramento wondered why we have to be protected from ugly plums but not from hideous citrus. Did 10,000 Californians really suffer last year, he asked, from eating homely oranges?

(Chuck Thomas is a Star-Free Press columnist.)

wise limit the sale of edible and fresh fruit except as necessary to protect the public health." [The Assembly defeated the measure two weeks ago.]

One side favors using state authority to enforce cartels and drive up fruit prices, in the belief that consumers cannot decide for themselves whether they would rather buy small, scarred, cheap fruit or big, pretty, expensive fruit. And one side favors free markets, competition, consumer choice and cheaper fruit.

Gee, this is a tough one.

San Jose Mercury News



# VISALIA TIMES-DELTA

SATURDAY, JULY 30, 1994

## Growers defy blemished fruit ban

By Richard Cole  
The Associated Press

**SAN FRANCISCO** — Farmers, churches and activists defied state law Thursday by delivering a ton of slightly blemished plums to the poor, saying rules barring the sale of such fruit are a national disgrace.

"This is homeless, abandoned fruit — fruit that could be fed to literally thousands of people, not only in California, but throughout the land," said the Rev. Cecil Williams of Glide Memorial Church.

Fifty-two million pounds — 10 percent — of the nation's plums, most of which are grown in California, are allowed to rot or fed to cows because laws prohibit shipping fruit with minor cosmetic flaws.

A truckload of the contraband fruit rolled into Glide Memorial Church in San Francisco's Tenderloin district, and was handed out to the Salvation Army, religious groups and homeless organizations.

The farmer who grew and packed the plums, Dan Gerawan of Reedley, was threatened Tuesday with a \$1.6 million fine by the California Department of Food and Agriculture.

"We've got murderers and rapists walking the streets, and tens of thousands of people starving to death in Rwanda, and I'm being visited by the plum-compliance officers," he said.

The campaign to distribute blemished fruit is supported by the Consumers Union, Farmers Alliance for Improved Regulation and others, including a discount food chain called Cheaper Stores.

The fruit has sold briskly for 29 cents a pound in the chain, compared to 79 cents for unblemished fruit in many stores, said company President Ned Roscoe.

"When customers hear the story be-



**Fruit for the poor** — Bags of contraband fruit are distributed to poor residents of San Francisco's Tenderloin district in defiance of state regulations.

hind it, it sells even faster," he said. But state inspectors are focusing on the store examining the fruit, said Roscoe.

Mark Talamantes of the Consumers Union said 5 million Californians live in poverty, two-thirds of them children. The

California Medical Association is supporting a change in state law to allow these children access to blemished but otherwise healthy fruit, he said.

"There's no reason why this fruit should waste in the fields — it's a nation-



Lacy Atkins/Associated Press

**Blemished fruit** — The Rev. Cecil Williams displays substandard plum. "This is a homeless, abandoned fruit that could be fed to literally thousands of people," the San Francisco pastor said.

al disgrace," he said.

The first boxes of plums were handed out Wednesday to organizations feeding the poor and homeless, including the Episcopalian group Canon Kip Seniors Facility, which fees up to 200 people daily, said Nathaniel Drawsand.

"This will help quite a bit," he said as he lugged boxes away.

After the groups took several cases each, individuals received small plastic bags of plums to bring home. They waited patiently outside Glide in a line that grew quickly as the word spread in the Tenderloin.

The food giveaway was part of a drive to pass state legislation currently stalled in the Assembly. The bill would remove restrictions on blemished fruit.

# San Francisco Examiner

AUGUST 4, 1994

## Farmer, store challenge ban on ugly plums

Imperfect-looking fruit selling well at cut-rate price, but state says it must be dumped

By Eric Brazil  
OF THE EXAMINER STAFF

Rebuffed by the Legislature in an attempt to ban destruction of millions of pounds of fruit each year, consumer activists and a Fresno County plum grower have taken their campaign to the streets — and to a cut-price grocery chain willing to sell “contraband” fruit.

The state Department of Food and Agriculture is investigating grower Dan Gerawan of Reedley and Benicia-based Cheaper Stores, a 78-store Northern California chain, because they’re challenging a state regulation that compels destruction of blemished plums.

“We’ve got murderers and rapists walking the street and tens of thousands of people starving to death in Rwanda, and I’m being visited by the plum-compliance officer,” an angry and apprehensive Gerawan said Wednesday. “I’m being threatened now with a fine of \$2,500 for every box of (blemished) plums I ship.”

Plums and 27 other produce items are distributed under so-called “marketing orders,” which set quality standards for appearance and maturity. Because the plum order is the newest and, in the view of consumer activists, the most likely to be abused, it’s the focus of the campaign.

Each year, about 525 million pounds of plums are harvested, according to a group called Farmers Alliance for Improved Regulation. Of that, an estimated 10 percent are thrown out solely because of cosmetic flaws.

### Plums for Glide food program

Consumers Union is scheduled to deliver 150 cartons of Gerawan-grown Golden Rosa and Friar plums to Glide Memorial Church

in San Francisco on Thursday for the church’s free-meal program, demonstrating the quality of fruit that growers are forced to dump.

“People are hungry, social programs are being pared back. ... The need for fresh produce grows, but there is a state agency which virtually forces the destruction of 52 million pounds of California plums simply because they are not beautiful,” said Harry Snyder, West Coast director of Consumers Union.

A bill sought by anti-dumping forces and carried by Assemblyman Ross Johnson, R-Fullerton, would have banned dumping of five fruits — plums, strawberries, pears, cantaloupes and cling peaches — but it has failed to gain enough votes.

### Labeled ‘contraband’

Cheaper Stores is continuing to sell Gerawan plums — conspicuously labeled “contraband” — for 29 cents a pound, about 50 cents below the supermarket price for cosmetically perfect plums.

“We’ve had ‘em in every store, and we’ve sold out in probably a third of ‘em,” said Cheaper Stores President Ned Roscoe. “This is a terrific deal. It’s great fruit. It shows how ludicrous the whole situation is.”

A.J. Yates, deputy director of the Department of Food and Agriculture, acknowledged that an investigation was under way. Despite the public challenge by Gerawan and Cheaper Stores, he said “we don’t know that there have been any violations.”

California growers approved the plum marketing order last May in a referendum conducted by the Food and Agriculture Department.

Opponents view the marketing order as a way to prop up plum prices.

“I’m against marketing orders that require that fruit be kept off the market. ... I’m a big proponent of grading,” he said. “That’s what government bodies should do — grade produce and protect us against dangerous foods. Don’t protect us against the appearance of food. That’s what the market does.”



# The Fresno Bee

Wednesday, August 3, 1994

## Beauty only skin deep



John Pish, manager of the Cheaper! store, sets up a display of "contraband" plums — fruit that doesn't meet state quality standards.

Photos by Ralph V. Throneberry — The Fresno Bee

## Store offering blemished fruit to consumers at a pretty price

■ State regulators warn the grower and store may face sanctions.

By Will McClatchy and Pamela J. Podger  
The Fresno Bee

Bags of San Joaquin Valley plums bearing ominous "contraband" labels and deeply discounted prices went on sale at a small grocery chain Tuesday.

Contrary to some predictions, blemished fruit being sold in defiance of law appears to have caught the eye of consumers. State regulators have warned the store and the grower, Gera- wan Farming of Reedley, that fines and other sanctions may be levied.

This is the latest skirmish in an ongoing dispute over mandatory quality inspections under agricultural marketing orders that govern certain crops. Critics, including Consumers Union, say the rules keep edible but blemished and potentially cheaper fruit off store shelves.

Advocates of mandatory quality inspections say the public has no interest in fruit with rough spots or nicks. But that did not appear to be the case at the Cheaper! store at West Ol-



Small flaw. The blemish on this plum is enough to have it rejected under state agricultural regulations.

ive and North Marks avenues, where Fresno resident Renee McCants stopped to examine plums and nectarines on Tuesday.

At 30 cents per pound, the plums cost far less than what she normally pays for tree fruit, she said, and the rough spots on the skins do not bother her. "As long as it doesn't get me sick I don't care," said McCants.

Another homemaker said she likes fruit a little softer than the ones she saw in the bags, but approves of the idea. "They look good to me," she said.

Store manager John Pish said he sold eight bags in the first hour and expected to run out of his 36-bag inventory on the first day. "That's pretty quick," he said.

Please see Blemished, Page B3

## Blemished: Prices lower

Continued from Page B1

Some of the interest in the fruit seems to come from media publicity around the product, which has had extensive television and newspaper coverage.

"We actually do make money on the product," Pish said. "It has an average [profit] margin for the store."

Jeff Fields, store manager at a midtown Cheaper! store in Sacramento, said three cases sold on Monday night.

"These will not be a problem. It will be one of our better sellers," he said.

"Most people see 'em and chuckle because they see on the sticker on the bag that the plums don't meet the state beauty standards," said Fields. The "contraband" labels are designed to poke fun at the regulations.

But the response by the California Department of Food and

Agriculture may be no joking matter.

Spokesperson Carla Agar said the agency was investigating the sale of fruit that fails to meet standards at Cheaper! stores and could take punitive action.

A lack of speedy action could be taken as a sign that marketing order laws requiring quality inspections are not being applied.

"The penalties are basically fines, with the ultimate penalty a revocation of a business license," she said. "We have been to court [in the past]. We have imposed lots of fines on folks."

Management at Cheaper! stores boldly predicts that it would trounce the department before a jury if fines are levied and that a court battle will only serve to rouse public opinion in support of an unregulated fruit market.

*These will not be a problem. It will be one of our better sellers. Most people see 'em and chuckle because they see on the sticker on the bag that the plums don't meet the state beauty standards. ?*

Jeff Fields,  
Cheaper!, Sacramento

# The Fresno Bee

The Fresno Bee • Saturday, July 30, 1994 A13

## BUSINESS

### AGRICULTURE

# Plum grower defies blemish ban

Mature fruit will be sold at less than half regular retail prices — in violation of state quality standards.

By Will McClatchy  
The Fresno Bee

Plum grower Dan Gerawan on Monday plans to sell blemished but otherwise edible plums to a major food store chain in defiance of the state's plum marketing regulations.

By offering mature plums at less than half regular retail prices, Gerawan and his retail partner hope to win over the hearts, minds and especially stomachs of consumers in order to end mandatory culling or dumping of fruit.

"Their quality will exceed what is normally found in the average supermarket today," promised Gerawan, whose family's farm in Dinuba is one of the largest plum growing operations in the world. "[The shipment] may not be as pretty but as far as maturity and eating quality, it will be better."

Last year there were no restrictions on which plums could be sold. But this year growers voted in a marketing order that mandates inspections and sets minimum quality standards for appearance and maturity. Farmers say the rules assure customer satisfaction by keeping quality high. It is illegal to sell fruit that does not meet the standards.

*'I don't grow this product to see it rot in the field,'*

Dan Gerawan,  
plum grower

"I don't grow this product to see it rot in the field," said Gerawan. "I grow it to see it reach the consumer. My livelihood depends on satisfying customers."

Gerawan's actions are being supported by Consumers Union, a consumer activist group leading the fight against mandatory quality controls in marketing orders.

Both Gerawan and Cheaper Stores intend to warn consumers that the fruit does not meet state quality standards.

Although the sale is only for 100 36-pound bags of fruit, it could trigger fines by the California Department of Food and Agriculture.

"I don't know what the ramifications are," said Gerawan.

But his customer John Roscoe, vice president at The Customer Company in Benicia, which manages Cheaper stores in 83 locations across Northern California, said that Food and Agriculture won't stand a chance if it attempts punitive action.

Last year a jury acquitted his firm of charges that it violated state regulations that forbid discounting milk, Roscoe said. "I don't think there is a jury in this state that will convict us for selling food cheaper," he said. "The lesson is that the public is not stupid. They want things cheaper."

Many growers and fruit wholesalers, however, doubt blemished fruit can be sold profitably. Dave Curschman, controller at tree fruit cooperative and wholesaler Mayflower Fruit Association in Exeter, said, "There is not a market for it because there isn't really a market for good quality fruit."

"For good quality, large-sized fruit without a blemish, you are lucky to get \$6 or \$7 a carton from [plums]," he said. "Most growers have to have at least \$5 to \$6 to break even."

That is because picking, packing, cooling and transportation costs are the same for blemished fruit as for any other, he said. He felt growers would be lucky to get \$3 or \$4 per carton for blemished fruit.

Gerawan is convinced he can still make a profit selling culled fruit. And Roscoe predicts a stampede of consumer interest.

"We plan to charge 10 cents a plum or 29 cents a pound," he said. "I noticed that Safeway's prices are 79 cents a pound."

"Any time we enhance the idea that we are cheaper we will enhance our business, and in this case we are plum cheaper," said Roscoe.



AUG 4 - 1994

*Allen's* P. C. B. Est. 1888

# Threat ends farmer's sale of ugly plums

**Fear of heavy  
fines prompts him  
to stop defying  
order to dump  
imperfect fruit**

By **Eric Brazil**  
OF THE EXAMINER STAFF

Chastened by what he described as a threatening encounter with a state investigator, a Fresno County plum grower-shipper on Thursday said he'll stop selling blemished plums in defiance of state regulations.

"My intention is not to sell any more," said Dan Gerawan of Reedley, who had been selling blemished plums to Cheaper Stores, a 78-store Northern California chain, since Monday.

Benicia-based Cheaper Stores has been selling the plums, conspicuously labeled "contraband" for 29 cents a pound, about 50 cents below supermarket prices.

Rebuffed by the Legislature in an attempt to ban destruction of millions of pounds of fruit each year, Gerawan and Consumers Union had taken their campaign to the streets — and to Cheaper Stores.

But Gerawan retreated late Wednesday and surrendered on Thursday.

"Bryce Jasper, a supervising special investigator for the California Department of Food and Agriculture, told me that they can go to court and try to obtain fines for every box (of plums) I ship," Gerawan said. "The risk just became too great."

Nevertheless, Gerawan said, "I think we proved our point: There definitely is a market niche for this fruit."

As he mulled his decision on Wednesday, Gerawan was both angry and apprehensive.

"We've got murderers and rapists walking the street and tens of thousands of people starving to death in Rwanda, and I'm being visited by the plum-compliance officer."

Plums and 27 other produce items are distributed under "marketing orders," which set quality standards for appearance and maturity. Because the plum order is the newest and, in the view of consumer activists, the most likely to be abused, it's the focus of the campaign.

Each year, about 525 million pounds of plums are harvested, according to a group called Farmers Alliance for Improved Regulation. Of that, an estimated 10 percent is thrown out solely because of cosmetic flaws.

## Plums for Glide food program

Consumers Union delivered 150

boxes of Gerawan-grown Golder Rosa and Friar plums to Glide Memorial Church in San Francisco on Thursday.

Several organizations, including the Salvation Army, Delancey Street and St. Vincent de Paul received boxes of plums; the rest were to be bagged and served at lunch from Glide's kitchen, according to the Rev. Cecil Williams.

"People are hungry, social programs are being pared back. ... The need for fresh produce grows, but there is a state agency which virtually forces the destruction of 52 million pounds of California plums simply because they are not beautiful," said Harry Snyder, West Coast director of Consumers Union.

A bill sought by anti-dumping forces and carried by Assemblyman Ross Johnson, R-Fullerton, would have banned dumping of five fruits — plums, strawberries, pears, cantaloupes and cling peaches — but it has failed to gain enough votes.

## Labeled 'contraband'

Cheaper Stores continues to sell blemished plums.

"We've had 'em in every store, and we've sold out in probably a third of 'em," said Cheaper Stores President Ned Roscoe. "This is a terrific deal. It's great fruit. It shows how ludicrous the whole situation is."

A.J. Yates, deputy director of the Department of Food and Agriculture, acknowledged that an investigation was under way. Despite the public challenge by Gerawan and Cheaper Stores, he said "we don't know that there have been any violations."

California growers approved the plum marketing order last May in a referendum conducted by the Food and Agriculture Department.

"I'm against marketing orders that require that fruit be kept off the market. ... I'm a big proponent of grading," he said. "That's what government bodies should do — grade produce and protect us against dangerous foods. Don't protect us against the appearance of food. That's what the market does."

# VISALIA TIMES DELTA

Saturday, August 6, 1994

## FOCUS ON AGRICULTURE

### BEAUTY IS IN THE EYE OF THE GROWER

Reedley farmer ignites feud over scarred fruit



Johanna Vossler/Times Delta

River of plums — Tony Martinez, packing-cold storage manager for Gerawan Farms, surveys a sea of slightly damaged Grand Rosa plums that

were dumped in west Reedley on Friday. His employer, Dan Gerawan, is fighting to allow scarred fruit to be sold in supermarkets.

## Millions of pounds of blemished fruit dumped each year

By Eric Coyne  
Times-Delta

**REEDLEY** — Nutritional genocide.

That's how Dan Gerawan describes the state's destruction of millions of pounds of blemished fruit each year.

The Reedley grower, who said his family destroys 100,000 pounds of plums a week, has become a self-styled crusader for scarred peaches, plums and nectarines.

The state responded this week, he said, by threatening him with a \$1.6 million fine for defying a state marketing order by selling fruit with cosmetic defects to a discount grocery chain.

"The destruction of this fruit is nutritional genocide directed against the poor," said Gerawan.

Bags of Gerawan's "cosmetically challenged" plums started appearing on shelves at Cheaper Stores in Fresno and Sacramento. The fruit, labeled "contraband" sold for 23 cents a pound; perfect plums

## A blemished record

### Fruit harvesting in California

Each year, California ships about 17 million 25-pound packages of peaches, 17 million 25-pound packages of nectarines, and 15 million 25-pound packages of plums. But those packages represent about 80 percent of what is harvested. Millions of pounds of blemished fruit are dumped each year.

All figures in millions

Product	Total pounds harvested	Total pounds shipped (80% of harvested pounds)	Total pounds "ugly" fruit dumped
Peaches	531.25	425	26.5
Nectarines	531.25	425	26.5
Plums	1,587.5	1,270	105.5
<b>Total</b>	<b>1,587.5</b>	<b>1,270</b>	<b>105.5</b>

Source: Farmers Alliance for Improved Regulation

Dave White/Times-Delta

bring 79 cents a pound in supermarkets.

Bryce Jasper, a special investigator from the California Department of Food and Agri-

See Fruit/2A

■ **MARKETING ORDERS:** Process keeping scarred fruit off shelves is decades old/2A  
■ **HELLO, L.A.:** Blemished plums arrive at food bank/2A



# Fruit

Continued from page 1c

culture paid him a visit almost immediately.

"He sat right there in my office and told me they could fine me up to \$2,500 a box," Gerawan said. "He made it clear that wasn't per shipment or per pallet — it was per box."

"Gary Van Sickle from the Tree Fruit Marketing Association was sitting right next to him," Gerawan said. "If that isn't a threat, I don't know what you call it."

Late Friday, officials told a different story.

"There was no threat implied," said Carla Agar, the state Department of Agriculture's director of external affairs. Agar said the farmer has not been fined, but is the subject of an on-going investigation which could result in both civil and criminal penalties.

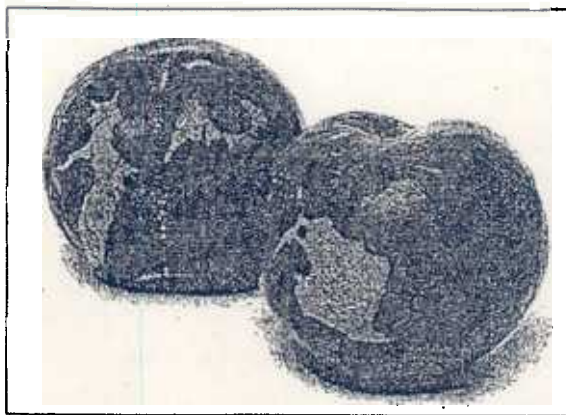
"Gerawan asked what sanctions could be imposed," Agar said. "He has not been cited. We are still investigating whether or not he is in violation of state law."

Agar admitted officials bought some of Gerawan's fruit at Cheaper Stores before Jasper's visit. She said the investigator went to Reedley seeking documentation showing how much of the blemished fruit was sent to Cheaper, a request Agar said Gerawan refused. The investigation was initiated after the Tree Fruit Marketing Association complained, she said.

The fruit carried a strongly-worded warning: "These plums fail to meet the State of California's fruit beauty standards. These plums are nutritious and delicious, but not real pretty."

Interviewed Friday in Reedley, Gerawan was reluctant to talk about how many plums he shipped to Cheaper stores, but said officials wished he had sent more.

"They were disappointed with the first 100 box shipment — they wanted a whole truck-



Roger Jerkovich/Times-Delta

**Imperfect** — Blemished plums such as these, usually destroyed, are being sold at a Northern California grocery store chain.

load," Gerawan said. "It's flying off their shelves at plum-cheaper prices, they like to say. And it hasn't affected the market for perfect fruit."

Gerawan said most of his customers won't buy blemished plums because they say their customers demand perfect fruit.

Normally farmers destroy the fruit by plowing it under or have it hauled away for cattle feed. Between April and August Gerawan's family destroyed more than 2 million pounds of fruit.

But Thursday, two days after Jasper's visit, Gerawan sent a truckload of plums to Glide Memorial Church in San Francisco's Tenderloin district, where they were handed out to the homeless.

Activists, farmers and church leaders held a press conference to protest the state marketing orders and drum up support for AB 3837 — a legislative bill that will come up for review before the state Assembly next week seeking to remove barriers to the sale of edible fruit.

"It's beautiful fruit — it just has a little birthmark on it," said Mark Talementes, a

## Blemished plums arrive at food bank

The Associated Press

LOS ANGELES — More than 200 boxes of blemished plums were donated to the Regional Food Bank Friday in a protest of rules that make it illegal to sell slightly damaged fruit.

The produce, amounting to thousands of pounds, will be handed out to 750 local charities, said Doris Bloch, executive director of the food bank.

spokesman with Consumers Union, which supports the marketing order reforms. Talementes said 5 million Californians live in poverty, two-thirds of them children.

"We believe a piece of fruit a day actually does keep the doctor away," said Steve Thompson, vice president of the California Medical Association in an open letter to legislators. "Join us in supporting AB 3877."

Visalia Times-Delta

Saturday, August 6, 1994

## Fruit marketing orders are decades old

### Staff reports

Plums and some other produce items are distributed under marketing laws set up decades ago.

Marketing orders were authorized by the California Marketing Control Act of 1937 and the federal Agricultural Marketing Act, which set quality standards for appearance and maturity. The federal plum order was abolished in 1991, but was replaced with a state marketing order.

The orders were set up to con-

trol the size and quality of fruit sold. They were originally established to control supply, keep prices stable and prop up the income of Depression-era growers.

Each year, about 525 million pounds of plums are harvested, according to the Farmers Alliance for Improved Regulation, a group opposed to market orders. Of that, an estimated 10 percent is thrown out because of cosmetic flaws.

Assembly Bill 3877, scheduled for a vote next week, is intended

to prevent the destruction of slightly blemished edible fruit. Similar legislation — AB 3794 — was voted down 36-26 on July 7.

Assemblymen Bill Jones, R-Fresno, Jim Costa, D-Hanford, and Cruz Bustamante, D-Fresno, all voted against AB 3794.

Nationally, the argument has been made that marketing orders are unreasonable exemptions from anti-trust laws. Proponents say without regulation, lesser-quality fruit will flood the market.

AUG 7 - 1994

Allen's P.C.B. Est. 1981

## Advocates for poor defy state

<sup>1407</sup>  
Churches,  
farmers ignore  
bruised-fruit law

SAN FRANCISCO (AP) — A state law barring the distribution of blemished fruit is just plumb wrong, a group of activists said.

Farmers, churches and activists defied state law last week by delivering a ton of slightly blemished plums to the poor.

"We've got murderers and rapists walking the streets, and tens of thousands of people starving to death in Rwanda, and I'm being visited by the plum-compliance officers," farmer Dan Gerawan, whose donkeys some of the contraband fruit, said Thursday.

The California Department of Food and Agriculture on Tuesday threatened the Reedley farmer with a \$1.6 million fine.

Fifty-two million pounds — 10 percent — of the nation's plums, most of which are grown in California, are allowed to rot or fed to cows because state laws prohibit shipping fruit with minor cosmetic flaws.

A truckload of the contraband fruit rolled into Glide Memorial Church in the Tenderloin district, and was handed out to the Salvation Army, religious groups and homeless organizations.

"This is homeless, abandoned fruit — fruit that could be fed to literally thousands of people, not only in California, but throughout the land," said the Rev. Cecil Williams of Glide.

The campaign to distribute blemished fruit is supported by the Consumers Union, Farmers Alliance for Improved Regulation and others, including a discount grocery chain called Cheaper Stores.



The Associated Press

Bags of contraband fruit are handed out at Glide Memorial Church in San Francisco on Thursday. Farmers and activists defied state law by delivering a ton of slightly blemished plums to the church in the Tenderloin district.

The fruit has sold briskly for 29 cents a pound in the chain, compared with 79 cents for unblemished fruit in many stores, said company President Ned Roscoe.

"When customers hear the story behind it, it sells even faster," he said. But state inspectors are now hovering around the store examin-

ing the fruit, said Roscoe.

Five million Californians live in poverty, two-thirds of them children, said Mark Talementes of the Consumers Union. The California Medical Association is supporting a change in state law to allow these children access to blemished but otherwise healthy fruit, he said.

"There's no reason why this fruit should waste in the fields — it's a national disgrace," he said.

The first boxes of plums were handed out Wednesday to organizations feeding the poor and homeless, including the Episcopalian group Canon Kip Seniors Facility, which feeds up to 200 people daily, said Nathaniel Drawand.

San Diego, CA  
(San Diego Co.)  
Union Tribune  
(Cir. D. 392,388)  
(Cir. S. 467,287)

AUG - 5 1994

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Rev. Cecil Williams: "This is homeless, abandoned fruit — fruit that could be fed to literally thousands of people."

## S.F. activists hand out damaged fruit to poor

By RICHARD COLE  
Associated Press

SAN FRANCISCO — Farmers, churches and activists defied state law yesterday by delivering a ton of slightly blemished plums to the poor, saying rules barring the sale of such fruit are a national disgrace.

"This is homeless, abandoned fruit — fruit that could be fed to literally thousands of people, not only in California, but throughout the land," said the Rev. Cecil Williams of Glide Memorial Church.

Fifty-two million pounds — 10 percent — of the nation's plums, most of which are grown in California, are allowed to rot or are fed to cows because state laws prohibit shipping fruit with minor cosmetic flaws.

A truckload of the contraband fruit rolled into Glide Memorial Church in San Francisco's rundown Tenderloin district, and it was handed out to the Salvation Army, religious groups and homeless organizations.

The farmer who grew and packed the plums, Dan Gerawan of Reedley in the San Joaquin Valley, was threatened Tuesday with a \$1.6 million fine by the California Department of Food and Agriculture.

"We've got murderers and rapists walking the streets, and tens of thousands of people starving to death in

Rwanda, and I'm being visited by the plum-compliance officers," said Gerawan.

The campaign to distribute blemished fruit is supported by the Consumers Union, Farmers Alliance for Improved Regulation and others, including a discount grocery chain called Cheaper Stores.

The fruit has sold briskly for 29 cents a pound in the chain, compared with 79 cents for unblemished fruit in many stores, said company President Ned Roscoe.

Mark Talementes of the Consumers Union said 5 million Californians live in poverty, two-thirds of them children. The California Medical Association is supporting a change in state law to allow these children access to blemished but otherwise healthy fruit, he said.

The food giveaway was part of a drive to pass state legislation stalled in the Assembly. The bill would remove restrictions on the sale of blemished fruit.

But agricultural-area assemblymen like Bruce McPherson, R-Santa Cruz, have resisted the change.

McPherson "is real concerned about the reputation of California agriculture," said aide Michael Warren.

But if the proposal is modified, Warren says, "I believe there can be a happy ending."



Pinole CA  
(Contra Costa Co.)  
West County Times  
(Cir. 6xW. 32,200)

JUL 7 1994

Allen's P. C. B. Est. 1888

## Two powerful lobbies seek legislative plums

1402  
By JENNIFER KERR  
Associated Press

SACRAMENTO — The state's agriculture and trial lawyer industries both like things big and juicy — in their fruits, lawsuit settlements and campaign contributions.

And, in this election year, they're attempting to get the Legislature to accede to giving both powerful industries an almost godlike status in California.

The two omniscient and benevolent mega-industries say they're just trying to protect poor, stupid consumers from off-color plums and sleazy attorneys. Without state government regulations, they say, consumers will be duped and their wonderful industries will be tarnished.

The battles on two bills resume when the Legislature returns on Aug. 8 from its monthlong summer recess.

The Assembly supported the agriculture industry this month in rejecting a bill the industry hates that would allow fruit to be sold that does not meet its cosmetic standards. The author, Assemblyman Ross Johnson, R-Fullerton, plans to try again in August.

The state Food and Agriculture Department has what are mysteriously called "marketing orders" for produce. These are really minimum standards, strenuously sought by farmers, for the size, color and maturity of fruits and vegetables that can be sold.

The state currently has market-

### ANALYSIS

ing orders for cantaloupe, cling peaches, pears, strawberries and plums. Fruit that is just a teeny bit too small or not quite purple or red enough cannot be sold.

Johnson's bill would keep the marketing orders and allow the industry to label fruit that meets the standards as California grade A or whatever. But it would also allow fruit that does not meet the standards to be sold, for instance, to poor people in the inner cities who might otherwise not be able to afford fresh fruit.

The rural legislators who argued emotionally against the bill said it would destroy the important farm industry by diluting the standards that have made California produce what restaurant owners in Minneapolis are willing to pay top prices for.

But urban lawmakers said it was ridiculous to waste edible fruit because it is not pretty.

The Assembly last month supported the trial lawyers by passing their bill to greatly restrict television advertising by their not-so-pretty brethren. The bill is scheduled for a hearing Aug. 9 by the Senate Judiciary Committee.

The bill would limit the visual and audio content of radio and television ads by lawyers, making them laughably primitive (and boring) in today's high-tech electronic age. An

ad could contain only the lawyer's voice and only a picture of the lawyer and a scroll of words said by the lawyer.

The ads would have to include tons of disclaimers, telling those stupid consumers that picking a lawyer is a very important decision that should not be based solely on ads and that no one can guarantee an outcome in a lawsuit.

The California Trial Lawyers Association says the dignified ads the bill would allow will inform consumers of their legal rights without appealing to greed.

The state, of course, would never condone appealing to greed. Except, of course, in California Lottery ads.

The bill's opponents, which include broadcasters, advertising agencies, and groups that represent consumers and the poor as well as advertising lawyers, say the bill would make it harder for ordinary people to pick a lawyer and would violate free speech rights.

Whether it's fruits or lawyers, the issues are government protection of a powerful industry and consumers' ability in a free society to make their own choices.

There are already plenty of federal and state laws and regulations that prohibit the selling of unedible or diseased fruit and the telling of outright lies in advertising.

It shouldn't be against the law to be a small or pinkish plum or a lawyer who uses garish, tasteless advertising.

AUG 11 1994

Allen's P. C. B Est. 1888

1402 THOMAS F. JONES

## Forbidden fruit: Delicious, dumped

**T**HE *Berkeley* LEGISLATURE may yet save us from Assembly Bill 3837, the "anti-fruit dumping" bill.

Our representatives may not find ways to deliver us from increasing crime, unemployment and homelessness, but at least our eyes are spared the unseemly supermarket spectacle of fruit that is scrawny, blemished or misshapen — but safe and nutritious.

I'm being sarcastic.

Carried by Assemblyman Ross Johnson, R-Fullerton, the bill would have banned dumping of five fruits — plums, strawberries, pears, cantaloupes and cling peaches. It failed earlier to get enough support, but a second vote was expected.

Considering the Alar apple scare and Earth Day hype of seasons past, it was disappointing to see the failure of the press to connect agrichemical pollution with the deeper import of the anti-dumping bill.

Is not the continued ban on the sale of imperfect but otherwise nutritious fruit a species of corporate-socialistic protectionism?

And does it not become a state mandate for the continued poisoning of our environment?

The reality is that state-enforced cosmetic standards give an unfair market advantage to the largest agribusiness operations. They can better afford to waste a sizable portion of their season's

harvest.

The standards also compel even the smallest growers literally (as is cynically said in the industry) to "pour on the chemicals," simply to make ends meet.

Ironically, the organic grower — the very model of hope for eradicating pesticide abuse — is consigned to the margin. These growers are forced to sell at exorbitant prices and/or to speculate in exotic or relatively unpopular fruit varieties that have not yet fallen under the aegis of arbitrary, state-mandated aesthetic controls.

(Known as "marketing orders," approved by a majority of the growers for a given fruit or vegetable, these standards are enforced by inspectors for the state Department of Food and Agriculture. They apply to 28 kinds of produce in California, from apples to plums.)

The upshot is that the largest shippers, buoyed for years on a lethal tide of agrichemical innovation, will continue to subvert the natural free-market process through laws that, in effect, operate as a price-support system that is essentially grounded in a "sheer-volume monopoly" of the most popular varieties of fruit.

Regrettably, the results include often-inflated fruit prices and a water system (lakes, rivers, reservoirs and, most ominously, ground water) that is becoming ever more contaminated.

**M**EANWHILE, potentially safer and healthier produce — albeit bruised, scratched, russeted and/or undersized — continues to be denied to the hungry millions.

Only in America could such an obscene luxury be tolerated: to strip the trees and allow edible fruit to rot in ditches while children go hungry and malnourished.

How many more school lunch bags — not to mention salads, pies, breads and jars of preserves — could be filled for 39 cents, 29 cents or even 19 cents per pound?

At the very least, this forbidden fruit could be purchased by relief agencies for distribution to the poor.

Better that growers husband their resources well, lest society conclude that its indulgences of cheap irrigation water, tax breaks, subsidies and price supports have been ungratefully transmogrified into garbage.

There is a solution — a symbolic and redemptive act to salvage our Earth Day dreams: Drop all aesthetic and size restrictions on fruit that is otherwise safe and healthful.

Deregulate fruit and vegetables. Allow consumers — not a quasi-oligarchical business consortium — to decide which sizes and degrees of imperfection will survive.

Let government rather interfere where it matters most — not by banning substandard fruit but by helping to curb the insidious effect of society's addiction to pesticide-perfect fruit and vegetables.

*Berkeley writer Thomas F. Jones, who manufactures decorative frames for mirrors, is a former fruit broker.*

# The Fresno Bee

Saturday, August 20, 1994

## Left-right togetherness for fruit, asset seizure

**I**t doesn't happen very often, but when it does, it's one of the most fascinating phenomena of Capitol life: dedicated liberals, who call themselves "grizzly bears" because they're almost extinct; and equally adamant conservatives, who relish the title "cavemen," joining forces in pursuit of principle.

Most often, it occurs on an issue involving consumers and state-enforced monopolies, such as the current debate over whether "cosmetically blemished" fruit can be barred from the market simply because big fruit growers want to keep prices as high as possible.

Pro-consumer liberals and pro-free enterprise conservatives are jointly pushing legislation to make the fresh fruit market more competitive but are butting heads with legislators who have agribusiness connections.

### Asset seizure law abuse

One of the rare left-right coalitions arose last year over legislation that would have continued the so-called "asset seizure" law under which police could confiscate houses, cars, boats, jewelry and other assets of suspected drug dealers without having to conclusively prove guilt.

The asset seizure program was fraught with abuse, both potential and real. Liberals didn't like the obvious threat to civil liberties, and conservatives didn't like the idea of seizing private property without justification.

Horror stories abounded about cops operating as virtual pirates, using the asset seizure law to grab property they coveted. The San Jose Mercury-News published a detailed and very critical examination of how the law had been used and abused.

Republican Attorney General Dan Lungren sought reauthorization of the law, due to expire at the end of 1993, but ran into



**DAN WALTERS**

stiff opposition in the Assembly from the coalition of conservatives and liberals. He was roasted during private discussions with legislators from his own party, and the legislative session expired without action as he refused to accept a modified version proposed by critics.

The asset seizure authorization did expire as scheduled, leaving the state of the law uncertain. Some authorities operated on the assumption that a previous law, allowing seizure only under more stringent circumstances, was still in effect but at least one court ruled that there was no seizure authorization.

### Coalition intact

The left-right coalition remained intact this year as confusion among police, prosecutors and judges continued to mount. It became clear that Lungren and his allies could not win approval of anything approaching the open-ended asset seizure law that had expired. Asset seizure was on the verge of disappearing altogether.

This week, just days before the 1994 session was to end, Lungren agreed to a new law that is even more stringent than the compromise offered in 1993. The legislation, approved in a two-house conference committee with the agreement of the attorney general's office, requires conviction before assets are seized, prohibits law enforcement agencies from keeping items seized and otherwise make it difficult for police to become freebooters.

That makes twice this year on fruit and on asset seizure that sincere liberals and sincere conservatives have made common cause. Maybe it'll become a habit and break up some of the insider back-scratching that produces so much bad legislation.

Dan Walters writes about state issues for McClatchy News Service

Los Angeles, CA  
(Los Angeles Co.)  
Civic Center  
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AUG 15 1994

Allen's P. C. B. Est. 1888

1402

## Affairs of State

By David Kline

### California's Regulations on Appearance of Fruit for Sale Are Plumb Stupid

Big Brother conspiracy theorists, listen up. Did you know that in California, it's against the law to sell fruit that doesn't meet the Department of Food and Agriculture's beauty standards?

It's a fact. Fruit and other produce must meet state standards; or it cannot be sold or even given away. Blemished produce—even if it is safe and healthy to eat—must be destroyed.

Approximately 50 million pounds of fruit are destroyed each year because of the state regulations, contained in the Department of Food and Agriculture's "marketing orders."

The name says it all. "Marketing orders." Why should the state be ordering anyone how to market his goods?

★

Several fruit growers and sellers want to know the answer to that question, and recently began selling "contraband" fruit in an effort to drive the matter to the courts.

Consumers Union, the Cheaper grocery store chain and some fruit growers have joined together to sell approximately 3,600 pounds of blemished but edible plums in direct defiance of the state.

"We're not talking plums that are

rotten or immature," farmer Dan Gerawan told reporters. "They're just cosmetically challenged."

The Department of Food and Agriculture has indicated that it already has begun an investigation of the matter, and will be cracking down on the renegade fruit vendors. The 2,000-member state agency can fine growers and grocers who violate the marketing orders, and even can go after a rebellious grocer's business license.

The reason that the marketing orders exist is that they inflate fruit prices, and therefore are supported by the big agricultural interests in the state. But some smaller fruit farmers don't like having to destroy 10 percent to 30 percent of their crop each year because of the state standards, and thus oppose the marketing orders.

The Wilson administration and many state lawmakers have sided with the large agricultural groups—which, perhaps not coincidentally, happen to contribute big money to political campaigns—to defeat legislation to do away with the marketing orders.

★

Legislation by Assemblyman Ross

Johnson, R-Fullerton, would prohibit the state from regulating the appearance or size of fruit, but would leave freshness and ripeness standards unchanged. The common-sense legislation failed in the Assembly after a spirited debate, but may be reconsidered this month.

The official excuse used by the state and supporters of marketing orders is that allowing the sale of blemished fruit would drive fruit prices down and put small growers out of business.

Even if one accepts this suspect

reasoning, the question remains why the state should intervene in the free market to save small fruit growers. In a capitalist society, consumers should dictate who sinks and who swims.

Since it is unlikely that the politicians will approve Johnson's legislation—and even less likely that Gov. Pete Wilson would sign it—Californians should pull for the rebels who are challenging the "plumlords" and trying to take the marketing orders to court. It may be the only way to do away with a plumb stupid law.



AUG 4 - 1994

Allen's P. C. B. E. 1994

# Save good food, help consumers

1402

## Editorial

More than 52 million tons of fruit is rotting this summer because of state government marketing orders designed to regulate quality.

Trouble is, more than quality is being regulated. The orders serve to keep prices up, too.

While this practice serves agribusiness, it doesn't necessarily serve consumers, who are denied a choice between unblemished fruit and less expensive, smaller fruit.

The California Assembly recently sided with agribusiness by rejecting a bipartisan bill, AB 3837, that would stop the destruction of plums, peaches, strawberries, pears and cantaloupes whose only fault is that they are not cosmetically perfect.

Grapes, oranges, cherries, almonds, apples, avacados, grapefruit, watermelons, apricots, quince, persimmons and other agricultural commodities would not be affected by AB 3837.

The bill needs 54 votes to pass but only has about 42 supporters; with 12 refusing to vote, and 25 opposed.

Among the opponents is Assemblymember Valerie Brown, the Sonoma Democrat who represents Napa County.

Brown, a member of the Assembly Agriculture Committee, says the bill may have some short-term benefits but threatens agriculture in the long-run.

Any change that make it more difficult for some farmers to succeed is a long-term threat to all farmers, Brown says.

Moreover, Brown argues California fruit growers have a hard-earned global reputation to uphold.

We might side with Brown if AB 3837 eliminated perfect fruit or placed bad fruit on the market.

But it does neither. The bill specifically provides that all fruit for sale must have "at least minimum maturity standards and general quality standards pursuant to the California Food and Agricultural Code."

Agricultural commissioners of individual counties will continue to follow state law that requires minimum quality standards. The bill maintains the state's role in protecting consumers from contaminated or diseased fruit.

If Brown can be convinced to change her vote - or amend the bill to further ensure that minimum quality standards will be met - other lawmakers might follow her lead.

## Tell Brown to vote yes on 3837

• Call Valerie Brown at (916) 445-8492 or (707) 649-2307 or (707) 546-4500.

• Write to Valerie Brown, Room 2130, State Capitol, Sacramento, CA 95814.

• Visit or write Valerie Brown at her district offices:

• 502 Florida Street, Vallejo, CA 94590.

• 50 D St., No. 301, Santa Rosa, CA 95404.

• Fax Valerie Brown at (916) 322-0674, (707) 649-2311 or (707) 546-9031.

Brown should weigh the concerns of farming interests with those of consumer and health advocates:

• Farmers, represented largely by Sunkist, the California Agriculture Council and the California Farm Bureau, say quality controls are needed to keep farmers profitable.

Lower the price of fruit and you lower an already-thin profit margin, they say.

• Consumer groups are pro-choice. They say consumers should have the right to choose between perfect fruit and less expensive, blemished fruit.

The lower-priced fruit will allow more lower-income families to enjoy healthier foods, they say.

• Health groups say increased fruit consumption will benefit all of society by producing healthier people.

A fruit a day keeps health costs down, they say.

At the risk of being labeled anti-agriculture, we must side with the consumer and health advocates and urge Brown to reconsider her vote next week.

With dwindling state funds forcing cuts in food and health programs throughout the state, this is not the time to let millions of tons of good food rot on the ground.

Assembly members should reconsider AB 3837 and amend marketing orders on these five fruits on behalf of small, independent growers, low-income shoppers and health-conscious consumers.

AUG 13 1994

Allen's P. C. B. Est. 1888

## Editorial

# An old system that must change

### The issue:

*Regulations requiring the dumping of blemished fruit.*

### Our observation:

*They are outmoded and unjustifiable.*

One of the more unreasonable practices in California agriculture is the dumping of blemished or undersized fruit to keep it off the market.

This practice is allowed by federal and state marketing orders in the name of protecting the consumers from inferior fruit. But the real reason for dumping is to keep fruit prices up by prohibiting the sale of low-priced produce.

This newspaper carried stories last Friday and Saturday about Reedley grower Dan Gerwan, who ignored a state marketing order by selling blemished plums to a discount food chain. The discount chain sold the plums for 29 cents a pound, 50 cents below supermarket rates. They sold out in a hurry.

The state Department of Food and Agriculture pounced on Gerwan and threatened him with a \$1.6 million fine if he didn't stop selling the low-grade plums. Under those terms, the grower, of course, had to stop.

The state has taken over marketing order control of some fruits since the federal government in recent years started withdrawing from that activity a step at a time.

To their credit, two members of the California Assembly have been trying to rectify this outrageous situation. Last spring Ross Johnson, R-Fullerton, and Phil Isenberg, D-Sacramento, introduced AB 3837, which would ban outright all state regulations ordering the destruction of less-than-perfect fruit.

The measure failed in its first go-round July 7 on the Assembly floor. The vote was 36 for and 26 against. Because it was an emergency measure it required 54 votes, two-thirds of the Assembly membership. Assemblywoman Andrea Seastrand was one of 18 who abstained.

The sponsors still don't have enough votes and time is running out for passage of the measure this year, a spokesperson in Ross Johnson's office said.

If it doesn't make it this year, we would urge Johnson and Isenberg to get the same bill in the hopper early next year so it won't have to be an emergency measure and will require only 41 votes — a simple majority — for passage in the Assembly.

We continue to wonder why it is that poor people should not have access to fruit they can afford.

In our view, the state is going far beyond its proper function in curtailing free markets, consumer choice and access to inexpensive fruit.

It's worthy of note that among the supporters of AB 3837 is the California Medical Association.

Marketing orders for dumping fruit were established during the Great Depression to help struggling farmers. Now they are used to maintain cartels and drive up fruit prices.

Trying to boost prosperity by mandating waste in this manner just isn't acceptable anymore.

Santa Barbara, CA  
(Santa Barbara Co.)  
Santa Barbara  
News Press  
(Cir. D. 52,000)  
(Cir. S. 57,000)

AUG - 7 1994

Allen's P. C. B. Est. 1888

## A blemished law

While Caltrans is showing mild intransigence in regard to consideration of an innovative solution to a traffic problem, the state's rules on another matter are downright stubborn and disgraceful.

Last week, a San Joaquin Valley farmer, with help from various neighborhood organizations, distributed about 2,000 pounds of slightly blemished plums to residents of the impoverished Tenderloin district in San Francisco. That might seem like a charitable act to you, but to California Agriculture Department officials it was a violation of state law that prohibits growers from selling or giving away blemished fruit. The farmer has been informed that he faces a possible fine of \$1.6 million.

Supporters of the blemished fruit law say its purpose is to protect the reputation of California agriculture. Opponents believe the rules allow large growers to restrict supply and control prices. We don't intend to get

into that fight, but it is clear that allowing edible fruit to rot in the fields does not make much sense from a humanitarian standpoint.

The sad truth is that millions of pounds of fruit are allowed to do just that in California. As the farmer who gave away the plums in San Francisco said: "We've got murderers and rapists walking the streets, and tens of thousands of people starving to death in Rwanda, and I'm being visited by plum-compliance officers."

It is estimated that California has 5 million people living in poverty, about two-thirds of them children. It is a disgrace to prevent farmers from distributing or discounting the price for those people on fruit that does not meet the blemish the state's standards.

There is a bill, now stalled in the state Assembly, that would remove restrictions on at least the sale of blemished fruit. The bill should become unstalled, quickly. That is the very least the Legislature could do to help so many Californians keep from going hungry.

Auburn, CA  
(Placer Co.)  
Journal  
(Cir. 6xW. 24,950)

JUN 14 1994

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## Shame 1402 Dumping good fruit should be stopped

In a world and nation with hungry people, the intentional wasting of good food is a shame and borders on criminality.

Consumer activists and medical groups are asking the Legislature to stop the dumping of tons of fruit left to rot in Central California orchards because of minor blemishes.

Dumping slightly blemished fruit has been standard in the past in California because of government marketing regulations. A bill that would stop the wasting of the fruit is expected to be the subject of a hearing today before the Assembly Health Committee.

As much as 90 percent of the peaches, nectarines and plums left to rot in orchards are edible, said a shipping manager for a fruit packing plant.

"It doesn't meet grade for government inspection and is not pretty enough to sit on the supermarket for John Q. Consumer, but there is nothing wrong with it," he said.

And Steven Thompson of the California Medical Association, one of the bill's supporters, said selling slightly blemished fruit at lower prices would help the poor.

"We believe it will provide fruit to families of lower income at less price in the open market," Thompson said.

But those farmers who oppose the bill believe removing the quality standards would flood the market with blemished fruit, drag down prices and eventually ruin small growers.

This is nonsense, of course, and another example of what is wrong with the agriculture industry in this country. Just like huge subsidies for various crops and agricultural enterprises, selling only perfect fruit amounts to artificial control of the marketplace.

Such control amounts to legalized price-fixing, and should certainly not be condoned — much less regulated — by the state.

In this case the control is a real shame. As the CMA representative points out, there are certainly poor people who could benefit from lower prices on wholesome but blemished fruit. The rest of us, for that matter, should have the right to choose between perfect fruit and lower priced fruit.

Let's hope the Legislature deals with this ill-conceived practice.

Do you have an opinion on this or another topic? Write Editor, Auburn Journal, P.O. Box 5910, Auburn, 95604.

Woodlands, CA  
(Yolo Co.)  
Democrat  
(Cir. 5xW. 11,000)  
(Cir. S. 11,300)

JUN 30 1994

Allen's P. C. B. Est. 1888

## Pretty fruit vs. edible fruit 1402

Every summer, tons of edible fruit are dumped to rot in orchards instead of being shipped to grocery stores. It's the law.

Federal marketing orders for some fruits require that small or blemished fruit be dumped rather than sold.

Supposedly this protects consumers from inferior fruit. It is, instead, a transparent attempt to prop up the price of fruit by limiting the amount that comes to market.

In 1991, the Bush administration began phasing out marketing orders. Plum orders were dropped. The Clinton administration plans to drop orders on oranges and lemons. Peaches and nectarines could be next.

Some fruit growers have asked the state to take over. The California Department of Agriculture issued a marketing order for plums in April.

Two members of the Assembly, Ross Johnson and Phil Isenberg had a simple insight: This is nuts.



Sacramento, CA  
(Sacramento Co.)  
Sacramento Bee  
(Cir. D. 270,000)  
(Cir. S. 338,000)

JUL 28 1994

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DAN WALTERS

## Politicos milk farmer bills

**T**his is a pop quiz; the correct answer entitles you to call yourself a Capitol insider.

Question: What piece of legislation sparked the longest and sharpest debate on the Assembly floor this year?

Clues: It was not the \$50 billion-plus state budget, or the landmark legislation to impose statewide restrictions on smoking, or even the heavily publicized "three strikes and you're out" crime measure.

It was a bill that would legalize the sale of otherwise healthy fresh fruit, that doesn't mean the beauty standards imposed by the state at the behest of the state's fruit growers.

Now why, a Capitol outsider might wonder, would such a bill inspire more than an hour of impassioned debate on both sides, with well over a dozen speakers?

Capitol insiders don't wonder. Virtually every farm area legislator, regardless of party, arose to denounce the bill as a frontal assault on the bedrock foundations of agriculture in California. And there was an odd-bedfellows collection of urban liberals and suburban conservatives who argued for it from the standpoints of making fruit cheaper to customers and upholding free enterprise.

**T**he bill was rejected, which surprised absolutely no one. When it comes to using the power of the state to enforce monopolistic agricultural marketing programs, legislators ordinarily are eager to follow the direction of farm groups, which contribute heavily to their reelection funds.

With much less fanfare, the Assembly also has approved another farm commodity price-fixing measure that could have even more impact on "consumers" pocket-books.

This bill, carried by Assemblyman Sal Cannella, D-Ceres, on behalf of the state's dairy farmers, would lock into law a complex marketing arrangement that's due to expire at the end of this year, one that Consumers Union says has already boosted the price of milk to California consumers by at least 30 cents a gallon.

A quarter-century ago, responding to the pleas of dairy farmers, the Legislature created a "quota" system, which allowed premium prices for milk produced by farmers holding what amounted to state licenses. The system, the farmers said, would protect them against being overwhelmed by new corporate dairies.

"Quota" — the industry word for the licenses — has become a marketable commodity unto itself, not unlike state liquor licenses. Farmers seeking the higher prices for milk produced by "quota cows" must buy the licenses from those lucky enough to have obtained them at the onset of the program. The market value of these milk-production permits is now estimated at \$800 million because they guarantee their holders \$1.70 more for every 100 pounds of milk, even though the milk is identical to that produced by non-quota cows. And if that sounds like nonsense, it's because it is.

**A** bill signed last year by Gov. Pete Wilson temporarily fixed the price differential into law and has resulted, the consumer advocates say, in sharply higher retail milk prices, thanks to a subsequent decision by Wilson's Department of Food and Agriculture. And the Cannella bill, now pending in the Senate, would make the quota system permanent.

A spokesman for Western United Dairymen, the sponsoring organization, contends that the quota system protects consumers by bringing stabilization to the industry, thereby insuring milk supplies.

If the new measure isn't passed, that \$800 million in state-created, but privately held, licensure assets could become worthless, and that's why quota-holders are working hard to get it enacted. The Legislature seems bent on doing exactly that for a handful of dairy farmers, regardless of the impact on more than 30 million milk drinkers.

DAN WALTERS' column appears daily, except Saturday. Write him at P.O. Box 15779, Sacramento, 95852, or call (916) 321-1195.

Paramount, CA  
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*Allen's* P. C. B. Est. 1888

## Fruit Regulations

1402 By David Kline

Big Brother, conspiracy theorists, listen up. Did you know that in California, it's against the law to sell fruit that doesn't meet the Department of Food and Agriculture's beauty standards?

It's a fact. Fruit and other produce must meet state standards, or it cannot be sold or even given away. Blemished produce—even if it is safe and healthy to eat—must be destroyed.

Approximately 50 million pounds of fruit are destroyed each year because of the state regulations, contained in the Department of Food and Agriculture's "marketing orders."

The name says it all. "Marketing orders." Why should the state be ordering anyone how to market his goods?

Several fruit growers and sellers want to know the answer to that question, and recently began selling "contraband" fruit in an effort to drive the matter to the courts.

Consumers Union, the Cheaper grocery store chain and some fruit growers have joined together to sell approximately 3,600 pounds of blemished but edible plums in direct defiance of the state.

"We're not talking plums that are rotten or immature," farmer Dan Gerawan told reporters. "They're just cosmetically challenged."

The Department of Food and Agriculture has indicated that it already has begun an investigation of the matter, and will be cracking down on the renegade fruit vendors. The 2,000-member state agency can fine growers and grocers who violate the marketing orders, and even go after a rebellious grocer's business license.

The reason that the marketing orders exist is that they inflate fruit prices, and therefore are supported by the big agricultural interests in the state. But some smaller fruit farmers don't like having to destroy 10 percent to 30 percent of their crop each year because of the state standards, and thus oppose the marketing orders.

The Wilson administration and many state lawmakers have sided with the large agricultural groups—which, perhaps not coincidentally, happen to contribute big money to political campaigns—to defeat legislation to do away with the marketing orders.

Legislation by assemblyman Ross Johnson, R-Fullerton, would prohibit the state from regulating the appearance or size of fruit, but would leave freshness and ripeness standards unchanged. The common-sense legislation failed in the Assembly after a spirited debate, but may be reconsidered this month.

The official excuse used by the state and supporters of marketing orders is that allowing the sale of blemished fruit would drive fruit prices down and put small growers out of business.

Even if one accepts this suspect reasoning, the question remains why the state should intervene in the free market to save small fruit growers. In a capitalist society, consumers should dictate who sinks and who swims.

Since it is unlikely that the politicians will approve Johnson's legislation—and even less likely that Gov. Pete Wilson would sign it—Californians should pull for the rebels who are challenging the "plumlords" and trying to take the marketing orders to court. It may be the only way to do away with a plumb stupid law.

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## Plum Regulations

1402 By Brad Smith

For Reedy farmer Dan Gerawan, a California law that prohibits fruit growers from selling blemished but healthy produce is ridiculous.

"We're not talking plums that are rotten or immature," Gerawan said. "They're just cosmetically challenged. They don't meet the government's beauty standards."

To Gerawan, who farms 4,000 acres of orchards in Fresno County, California's system of regulations that set cosmetic standards for the state's produce is a bureaucratic excess that forces growers to destroy millions of pounds of fruit on an annual basis.

"We do not grow our crops to see them rot in the fields or fed to cattle because of arbitrary state beauty standards," he said. "Ten to 30 percent of our crop goes, and 50 million pounds a year is destroyed industry-wide due to these regulations."

In an effort to change the law, Gerawan, a grocery store chain, and the Consumer's Union advocacy group have banded together to offer 3,600 pounds of the "contraaband fruit" for sale.

The fruit will be offered for sale in 83 Cheaper grocery stores throughout Northern California beginning Aug. 1, said Cheaper president Ned Roscoe.

Roscoe said his stores will sell blemished plums for 29 cents a pound, 50 cents less than the price of similar produce that meets the state's standards.

"The extra 50 cents reflects all that work by the Food and Ag Department and the plumlords," Roscoe quipped. "Just because this poor plum hasn't been blessed by the plumlords doesn't mean people can't eat it."

Consumer's Union sees the action as a possible test case of the legality of the entire marketing order system, said John Greiner, a member of the group's legal staff.

"There are powerful agricultural interests in this state that have successfully organized to thwart the public interest," Greiner said. "If there's a lawsuit, we feel the marketing orders themselves would be found to be unconstitutional."

The regulations, called marketing orders, basically are agreements among producers of various agricultural commodities that they will not market their products unless they meet a given set of standards for appearance.

Supporters of the system, which has been in place since the 1940s, argue that the requirements manage the supply of produce and ensure quality.

The state Department of Food and Agriculture enforces the requirements. The 2,000-member agency, which included a 400-strong investigative arm, can fine growers and grocers who sell produce which violates the marketing order system. A grocer found in violation can lose his business license.

Opponents of the marketing orders have long argued that the procedure artificially inflates the cost of produce and forces the destruction of usable food.

The controversy led Assemblyman Ross Johnson, R-Fullerton, to introduce legislation that would prohibit the state from using appearance or size of a fruit as a criteria for regulation. Requirements for freshness and ripeness would be left in place.

The legislation was defeated in the Assembly on a 36-26 vote after rural lawmakers, with the support of Gov. Pete Wilson, lobbied hard against the bill.

The bill is set for reconsideration in the Assembly after the Legislature returns Aug. 8 from its summer recess.

Greiner said the legislative debate over the bill, arguably the most contentious so far this year, shows the power of California's agricultural interests.

"We had more debate on the floor on this than even the 'three strikes' bill did," Greiner said, referring to the controversial habitual offender sentencing bill passed into law in March. "The resources of the consumer side in support of this bill is far outweighed by the agricultural interests that oppose the bill."



AUG 3 1991

Allen's P.C.B. EST. 1888

## Fruit Dispute May Lead to Suit Over Restrictions

By BRAD SMITH

1402 Sacramento Bureau Chief

SACRAMENTO—For Reedley farmer Dan Gerawan, a California law that prohibits fruit growers from selling blemished but healthy produce is ridiculous.

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Carla Agar, a spokeswoman for the state agriculture department, said changing the marketing order system would ultimately harm California's consumers.

If the bill passes it would allow blemished fruit to flood the market, drag prices down, and ruin the small growers," Agar said. "The consumers won't have as much to choose from."

Greiner said that argument is a way for the Wilson administration to justify supporting business over the consumer.

The idea that providing fruit at a lower cost is going to push smaller producers out of business is ridiculous," he said. "There's no solid economic argument they can make against the bill."



# Certain blemishes discovered regarding California fruit policy



Believe it or not, Dan Gerawan compares the plums he has illegally sold from his Central Valley farm to the autos on a used-car lot.

The parallel? No, it's not that some used cars deserve the name of another

fruit.

It's that Gerawan's plums may not look so hot, but they — like the cars — are perfectly usable.

The difference is that the used-car salesman won't be fined by the state for selling, say, a 1984 Honda with a few scratches on the paint. Gerawan, on the other hand, faces state fines of \$2,500 for each box of slightly blemished plums he sold last week to Cheaper! discount stores in Northern California.

The state Department of Food and Agriculture, whose officers last week showed up unannounced at Gerawan's cold-storage house in Fresno, is enforcing a state law that forbids growers from selling so-called "culled" fruit to consumers.

**C**ulled fruit is, essentially, fruit not fit for consumers. Very often, however, the only problem with this fruit is that it doesn't pass the test for prettiness; maybe it has surface scratches or rough spots. Though perfectly tasty, cosmetically flawed fruit isn't allowed to go to market. Instead, it rots in farmers' fields. Because of packing, hauling and storing costs, even giving the fruit away is more costly than simply dumping it.

In California, culling laws apply to plums, cantaloupes, cling peaches, strawberries and pears. In the case of plums, about half of the 105 million pounds that farmers throw away every year is healthy and edible.

Mindful of the waste, some Capitol lawmakers have a bill that would put an end to laws that keep culled fruit from consumers. A noteworthy supporter of the legislation, AB 3837, is the California Medical Association, which anticipates that more poor people would eat fruit if they could get it at discount prices.

But last month, the measure failed in the Assembly by 18 votes — a walloping loss

## Inside

## Sacramento

DANA WILKIE

for what appeared to be a common-sense way to prevent waste and keep poor people healthier. Behind the defeat were powerful agricultural interests. They somberly predicted that the bill's success would mean the demise of farming in California.

Specifically, they worry that the market would be flooded with lower-priced fruit, forcing them to drop the prices they now charge for produce. Growers — especially small ones — would go out of business, they warned.

During last month's Assembly debate, lawmakers friendly with agriculture insisted that the bill would lower quality standards for California produce. The arguments made it appear that consumers would be threatened with mushy, mangled, infested and otherwise substandard food.

The bill gets a second try this month as

the Legislature begins to wrap up a two-year session. And what a difference a month of publicity could make.

**S**ince the July vote, Gerawan has mounted a one-man campaign of civil disobedience. Flouting the law and breaking with fellow farmers — who are either afraid of lower prices or accustomed to years of doing things the same way — Gerawan last Monday began selling an untold number of pounds of cast-off plums to Cheaper! stores, which has 83 outlets.

Cheaper! officials expressed surprise at the response.

"They sell like hotcakes," said Cheaper! President Ned Roscoe, who sold Gerawan's plums for 29 cents a pound — 50 cents less than neighboring Safeway.

Moreover, Roscoe said, he used the opportunity for a little political education: He put Gerawan's plums in a bag labeled "Contraband," and when customers queried, he explained that every year, 52.5 million pounds of plums — more than 26,000 tons — are left to rot because of California's culling laws.

When Gerawan got his visit from state

officers, he stopped his shipments. But he had made his point: Consumer demand for cast-off plums was so great that Gerawan could barely keep Cheaper! supplied during the few days he defied the law.

"Tomorrow, we may open the paper and read that Dan Gerawan is jailed for selling blemished plums," said Gerawan, who was also told he could face criminal charges. "What if we opened the paper and read: Used-car salesman jailed for selling cars with scratches?"

"That's called a state-controlled economy, and that's exactly what Russia and other economies are getting away from. I don't mean to sound radical, but it's un-American to ban a product simply because it's not pretty."

A budget-conscious public may consider Gerawan and followers the white hats in this story. And that would make it harder for lawmakers this month to cast a "no" vote against a cause that has fast gained attention and sympathy.

DANA WILKIE covers Sacramento for the Union-Tribune.

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PALO ALTO, CALIFORNIA

## A Fruitless Massacre in California

By JAMES BOVARD

Federal agencies have busied themselves in recent years lecturing the public on the need to eat more fresh fruits and vegetables. Nowhere in the pronouncements of the surgeon general and other health officials has there been a warning: Do not eat small-sized fruit. Yet Agriculture Department officials seem to believe that small-sized nectarines and peaches are so dangerous that the entire force of the federal government must be marshaled to ban their sale.

The Agriculture Department has placed a death sentence on as many as 500 million California peaches and nectarines. The San Joaquin Valley is littered with piles of rotting fruit — a feast for the worms. Once again, Agriculture Department marketing orders are seeking to achieve prosperity by mandating waste.

It is a federal crime for California farmers to sell nectarines less than 2 3/8 inches in diameter and peaches less than 2 7/16 inches in diameter. Because the San Joaquin Valley had good growing weather this year, the harvest has yielded a larger than usual number of slightly smaller fruits. The federal size restrictions may be effectively condemning more nectarines and peaches than ever before.

The Agriculture Department issued a decree explaining its long-standing nectarine policy in the June 19 Federal Register: "The minimum size requirements established for California nectarines rec-

ognize that larger sized nectarines provide greater consumer satisfaction than those of smaller sizes." And, since many people prefer larger nectarines, the department made it a federal crime to sell smaller nectarines — and sent in the nectarine police to enforce its dictates. Agriculture Department bureaucrats appear to believe that if consumers see small nectarines in the grocery store, they may become spooked and never buy nectarines again.

Federal and state agricultural bureaucrats can be extremely condescending toward farmers, claiming to need dictatorial power over some of the nation's farmers to protect those farmers against themselves. The only catch is, the bureaucrats usually know as little as or less than the farmers. The California Tree Fruit Agreement administers federal and state farm marketing standards. Its John Field, when asked on July 27 about studies to justify restrictions on small nectarine sales, replied: "We don't have any empirical studies . . . but if you look at price quotes for plums, that would kind of indicate intuitively that there is not a great demand for" small nectarines and peaches. Government officials are effectively imposing tens of thousands of dollars of penalties on growers based on bureaucrats' guesses about consumer preferences on fruit.

Dan Gerawan, California's largest nectarine and peach farmer and the leading opponent of the controls, observes: "Through the years, the CTFA has contin-

uously raised the minimum size regulations. While a certain small size may have been a quality, edible fruit one year, the following year it would be . . . no longer of edible quality."

On May 15 Mr. Gerawan's lawyer, Clifford Kemper, wrote Dan Haley, administrator of the Agriculture Department's Agricultural Marketing Service, asking for an emergency suspension of the minimum size restrictions on California nectarines and peaches. The Agriculture Department replied that it had requested the California Nectarine Administrative Committee to "undertake market research to determine the effect of fruit size on consumer preferences for fresh California nectarines and peaches," and promised that information would be available by Dec. 31.

But, in the meantime, the U.S. attorney in Fresno, Calif., has filed to get a federal injunction against Mr. Gerawan and a \$100 fine for every box of undersized fruit he sells. (The boxes were fetching less than \$10 each.) Mr. Gerawan had been selling his small peaches and nectarines in South Los Angeles, providing fresh fruit for inner-city buyers. Federal regulators apparently feared that allowing poor blacks to pay lower prices for small fruit would make it more difficult for the Agriculture Department to force the rich to pay higher prices for large fruit.

Administrator Haley insists the marketing orders are democratic because large majorities of farmers vote for the

controls in referendums. But this is a perversion of true democracy, effectively giving less efficient farmers the power to bushwhack more efficient competitors.

The Agriculture Department may have rigged last year's peach and nectarine referendums to perpetuate marketing orders — and jobs for a handful of federal and state bureaucrats. Regulations require that orders be supported by two-thirds of growers; fewer than two-thirds of peach and nectarine growers supported marketing orders, but the Agriculture Department claimed that the growers who did support the orders accounted for just over two-thirds of the volume of peach and nectarine production.

The referendum itself would have made Chicago blush: The Agriculture Department announced after the vote that 6% of the ballots had been "challenged" — but refused to disclose who had challenged them, whose ballots were disqualified or why they were nixed. The process was secret, with partisan electoral judges possibly manipulating the results for their own benefit. Since marketing orders are a Soviet-style command-and-control system, perhaps it is appropriate that the Agriculture Department also allows the farmers only Soviet-style elections.

Rep. George Miller (D., Calif.) recently put a large number of illegal nectarines in the House member's private dining room. The fruits were avidly consumed — with no complaints about their size. Rep. Miller is gathering co-signers for a letter to Agriculture Secretary Edward Madigan demanding that the department end its ban on relatively small nectarines and peaches.

George Bush could abolish all of these supply controls with a stroke of his pen. Unfortunately, Mr. Bush is apparently too busy warning voters that Bill Clinton and Al Gore secretly favor Big Government to bother liberating American farmers.

*Mr. Bovard, a former peach picker, writes often on public policy*

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# Aesthetic correctness

## Ludicrous law bans sale of blemished fruit

1402  
“We’ve got murderers and rapists walking the streets, and tens of thousands of people starving to death in Rwanda, and I’m being visited by the plum compliance officers.”

So says Dan Gerwain, a San Joaquin Valley plum farmer, who faces a \$1.6 million fine by the California Department of Food and Agriculture. His crime: Selling undersized, slightly blemished fruit to the “Cheaper!” discount food chain.

The plum farmer also admits guilt to one other act of civil disobedience. He gave away a truckload of fruit to the Salvation Army, religious groups and homeless organizations. That, too, is a no-no.

Gerwain, one of the largest plum suppliers in the world, finds himself on the wrong side of a state law that forbids the sale of so-called “culled” fruit.

Such fruit is deemed unfit for consumers because it fails to meet the state’s arbitrary aesthetic standards for size and appearance.

The state’s culling laws are a derivative of federal marketing orders, which control the amount of fruit available to the public. The marketing order for navel oranges, for instance, results in the destruction of 40 percent of California’s crop each year. The U.S. Department of Agriculture acknowledges that this policy costs consumers up to \$30 million a year.

The state ban on culled fruit results each year in 52 million pounds of plums — 10 percent of the nation’s crop — being left to rot in the fields. Similar culling laws apply to cantaloupes, cling peaches, strawberries and pears.

Defenders of culling laws say they are necessary to protect consumers from inferior fruit. But more to the point is that the laws are meant to keep fruit prices artificially high.

Indeed, the contraband plums offered at the 83 Cheaper! food stores were selling for 29 cents a pound. At rival supermarkets, by comparison, plums were fetching 50 cents more per pound. Consumers did not hesitate to buy the cheaper, aesthetically incorrect plums.

Lawmakers had an opportunity last month to repeal the state’s anti-consumer culling laws when AB 3837 came before the Assembly. The measure, sponsored by Assemblymen Ross Johnson, R-Fullerton, and Phil Isenberg, D-Sacramento, would have restricted the authority of the state Department of Food and Agriculture to withhold fruit from the market.

Although AB 3837 was widely supported by consumer groups and anti-poverty organizations, it failed by 18 votes. Lawmakers were swayed by the lobbying efforts of fruit producers, who claim that many small fruit farmers would go out of business without such government protectionism.

The Assembly will get one more bite at this apple soon, when the bill will come up for yet another vote. Gerwain deserves much credit for almost, single-handedly dramatizing the issues involved here.

State culling laws, like federal marketing orders, are relics of the distant past. The government has no business restricting the sale of perfectly good fruit on arbitrary aesthetic grounds. If the fruit is wholesome, consumers should have a right to buy it.



## Dance of the Bad Plum Faeries

**B**EFORE YOU let visions of Christmas plums dance in your head, consider that there is a move afoot that would drive up the price of plums. The California Department of Food and Agriculture is considering creating a California Plum Marketing Program, which essentially would create a cartel capable of raising plum prices by controlling supply through "marketing orders."

Sounds downright un-American, doesn't it? Especially when you consider that the commodity being manipulated is a nutritious food that the government spends money urging families to eat. Marketing orders often force farmers to let perfectly good fruit rot. And since California supplies 87 percent of the nation's plum crop, this proposed state regulation could drive up plum prices across the land.

### Be Fruitful and Substract

Here's how marketing orders can work. The cartels set standards, some of which ensure quality and protect consumers from buying fruit with hidden defects, but others of which seem designed with an eye toward limiting the volume of fruit that is sold. In the latter category, growers are not allowed to sell peaches or nectarines below a certain size. Since the size of a fruit is not a "hidden defect," but a "cosmetic defect" which consumers can see, Dan Gerawan of Gerawan Farming in Reedley, argued, size should not be a factor. Gerawan has been forced to leave heaps of perfectly edible small peaches and nectarines rotting at the roadside; he does not want to see similar fly-infested piles of plums.

This is not just an issue of letting consumers decide. Since little fruit is less desirable, it often is discounted and sold to the poor at affordable prices. Marketing orders hurt the poor. Harry Snyder, Western Regional Director of Consumer's Union, warned Food and Ag that it should not implement a plum marketing order because, "By making it illegal for growers to sell small or slightly blemished fruit, low-income people are denied access to a plentiful supply of nutritious fresh fruit."



In recent years, the Feds finally figured that marketing orders are, if not anti-American, at least anti-market and anti-consumer. Under the Bush administration, orange marketing orders were curbed. Two years ago, plum growers voted to end the federal plum marketing order. In August, the Clinton administration urged the Peach Commodity Committee to relax restrictions on the sale of small fruit.

This is where California comes in. Since the federal government finally is standing up for the consumer, observers fear that certain agribusiness interests are looking to the state to restore the cartels. The imposition of a California plum marketing order could have a domino effect: Today, plums. Tomorrow, everything in a fruit salad.

### Regulatory Scrooge?

The question is: Will California let it happen? Thursday, the Department of Food and Agriculture held a hearing on the matter. Food and Ag marketing specialist Glenn Yost explained that the department is "neutral" on the marketing order, but also is "duty bound" to administer a marketing order sought by growers. Department spokesman Carl de Wing said that Food and Ag director Henry Voss should make a decision on whether plum growers ought to vote on the proposed order in about a month.

J.P. Tremblay, spokesman for Governor Wilson, said that it's "early" for the administration of take a position on the marketing order. Others say the department's handling of the hearing has lacked the feel of neutrality. Only plum growers were notified of the December 16 hearing. That is, until a letter to Voss from Assemblywoman Jackie Speier, D-South San Francisco, warned that the department's failure to notify non-growers, such as consumer groups, may be a violation of the Administrative Procedures Act. Snyder charged that Food and Ag "is becoming a kind of 'regulatory Scrooge' for the poor."

Wilson ought to direct Voss not to hold a referendum on plum marketing orders. If Wilson allows a marketing order to be formed, the Legislature may act. But more importantly, if these orders are implemented, plum prices may rise. The poor would not have access to discounted small or blemished fruit.

As Gerawan noted, this marketing order is under consideration because certain plum interests petitioned Food and Ag "to allow the industry to form a cartel that would dictate to all California plum growers what they can sell and also dictate to the consumers what they'll have access to." Wilson should torpedo this one. Marketing orders mean that what the poor can't buy, flies get free.

"With all thy getting get understanding"

# Fact and Comment

By Malcolm S. Forbes Jr., *Editor-in-Chief*



## THE MOST UNDERVALUED ASSET IN THE WORLD

The U.S. dollar.

### MAJOR EXAMPLE—AND A MAJOR MISTAKE

PRESIDENT BUSH should take his campaign cues from British Prime Minister John Major, who earlier this year won an upset victory in the face of an economy far worse than our own. Major slammed his opponents for their vow to raise taxes.

George Bush has made his point on family values. And Governor Clinton's slithering on free trade, his draft evasion, etc., will do the Republicans' work on the character issue. But people remain worried about the economy. The President must emphasize that growth can come only from reducing the tax burden, not increasing it.

But the Administration blundered badly by passing

up the opportunity to issue an executive order indexing capital gains for inflation. Charles J. Cooper, former assistant attorney general, recently rendered a legal opinion concluding that the President had the authority to do this without legislation. Instead of letting the matter be decided by the courts, the Administration flinched.

Politically, the issue was a winner. Why should farmers, homeowners, stockholders pay tax on fictitious gains? This only destroys capital. Because of high taxes, capital is locked in old investments. Indexing for inflation would liberate considerable sums for new ventures, which create most of the new jobs in our economy.

### ROTTEN REGULATIONS BEGET ROTTEN FRUIT

HAVING PUNTED ON indexing capital gains, the President can still strike a smaller but edifying blow for prosperity. The Department of Agriculture has a raft of regulations, some left over from the Depression era, that cost consumers dearly and are literally wasteful.

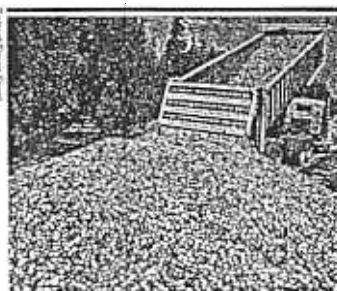
In California recently, growers of peaches and nectarines had to let tons of fruit rot. Why? Because the Agriculture Department decreed a minimum size that these fruits must be before consumers are allowed to buy them. So growers with smaller than regula-

tion-size fruit were threatened with criminal sanctions if they tried to sell them to the public, even though their peaches and nectarines were both edible and nutritious. And on what did the Aggies base these regulations? Only a hunch that consumers wouldn't buy the small stuff.

Why can't consumers make their own decisions?

The real reason for these regulations is to reduce supply to keep prices high.

The President has the authority to abolish these kinds of controls. He should promptly do so.



This doesn't help consumers.

### NONSTARTER

THE MUCH PUBLICIZED Perot plan for solving our budget deficit crisis misfires. It assumes the problem is simply a matter of raising taxes and curbing spending. It betrays an utter lack of understanding of what is behind the deficit.

The goal of government policy should be simple: Encourage the economy to grow as rapidly as it naturally can. Perot's scheme, with its burdensome array of new taxes, would reduce growth, not boost it. Perot et al. don't grasp the fact that taxes are not only a means of collecting revenue but also a price. If the price for productive economic behavior is too high, there will be less of it.

When Reagan slashed income tax rates, federal receipts grew mightily. The portion of the income tax take paid by the rich went up impressively.

Perot ignores the systemic causes of federal spending growth.

**Medicare.** Cutting benefits is a superficial solution. The problem with soaring medical costs is the way they are financed. Free-market solutions would curb runaway costs more effectively than government price controls. They would also not destroy medical research and development.

**Social Security.** You would never know it from the

## Fruit freedom

**D**uring the last two summers, millions of pounds of good, edible fruit rotted in California orchards because the law made it illegal for willing growers to sell it to willing buyers. The mechanisms for creating this waste were federal marketing orders, under which growers gang up to restrict the supply of fruit to hold up prices.

Because of the public uproar created by this spectacle, the Clinton administration has begun to pressure growers to relax marketing order restrictions on the size and appearance of fruit that are used to manipulate the market. In response, some growers are turning to the state, looking to use state marketing orders as a refuge. Last month, the Wilson administration approved setting up a marketing order that would have the power to restrict the sale of edible fruit on cosmetic grounds.

(Sacto. Bee - 4/11/94)

That sort of market-fixing should not be permitted. Today, the Assembly Agriculture Committee will hear a bipartisan bill, authored by Assemblymen Ross Johnson and Phil Isenberg, that simply says that "the state shall not prohibit or otherwise limit the sale of edible and fresh fruit."

Not every consumer wants or needs large, unblemished peaches or plums. No one can tell from the plum pie or the peach cobbler whether the fruit was small or whether the cook had cut out a bruise. Many low-income consumers would be happy to buy small, blemished fruits at lower prices, and many growers are willing to sell it to them. It's time for the state to get out of the way and let consenting adults make their own decisions about what fruit they want to buy.



# SAN DIEGO UNION - TRIBUNE

4-6-94

## Fruitful legislation

### *Bill would limit state marketing orders*

**A**nyone who has read "The Grapes of Wrath" appreciates the insanity of government marketing orders requiring the destruction of perfectly good fruit.

"There is a crime here that goes beyond denunciation," wrote novelist John Steinbeck. "There is a sorrow here that weeping cannot symbolize . . . Children dying of pellagra must die because a profit cannot be taken from an orange. And coroners must fill in the certificates — dies of malnutrition — because the food must rot."

The federal marketing order for California oranges, which Steinbeck decried a half century ago, remained in place until December 1992. Ironically, while the federal government is moving away from its Depression-era agriculture policy requiring the destruction of fruit, the state of California is moving toward issuing its own marketing orders.

The first hint of this came last December when the state Department of Food and Agriculture proposed to adopt certain "quality" standards for plums. Had the standards taken effect, thousands of pounds of edible plums would have been left to rot on the trees even though they were wholesome fruit. They simply were either smaller than regulation or did not meet the state's cosmetic standards.

Fortunately, the Department of Food and Agriculture was dissuaded from its action by a public outcry. But to ensure

that the state's consumers are not deprived in the future of perfectly good plums, oranges or other fruit, Assemblymen Ross Johnson, R-Fullerton, and Phil Isenberg, D-Sacramento, have introduced a bill restricting the state's ability to withhold fruit from the market.

"In the wake of federal reform efforts," says Johnson, "a group of commercial packers and growers has been trying to get the (state) to do what the federal government is becoming reluctant to do — enforce artificial limits on fruit supplies in order to fix prices."

Indeed, that is precisely what state marketing orders are all about. The cartels that control crops — oranges, lemons or plums — want the government to use its regulatory powers to control the amount of fruit available to the public so that prices are higher than they otherwise would be.

In the case of oranges, for instance, the federal marketing order resulted in destruction of 40 percent of California's crop every year. This policy cost consumers up to \$30 million a year, according to a study by the federal Department of Agriculture.

Marketing orders were difficult to justify during the era depicted in "The Grapes of Wrath." They are even harder to justify today. Lawmakers can strike a blow for California's consumers by passing legislation prohibiting the Department of Food and Agriculture from ordering the destruction of good fruit.

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## Commentary

# Market disorders

3793  
**D**octors across the country, including those who work for government health agencies, recommend eating more fruit. It's almost fat-free and contains bounteous vitamins of every sort.

To make the fruit market freer and fruit itself cheaper, the administration of President Bush adopted reforms that reduced the government-mandated destruction of edible fresh fruit. Such destruction has been carried out under so-called "market orders" mandated by government, which limit sales to keep costs high for some special interests. President Clinton has continued the Bush policy.

In California, some (but certainly not all) fruit growers and marketers want to revive the government-sponsored fruit destruction under the guise of "cosmetic" standards for fruit. A report by Consumers Union explains, "That's a power that's often abused in an attempt to control the fruit supply and fixed prices . . . So-called 'quality controls' which restrict the sale of small or cosmetically blemished fruit have been historically abused as de facto supply controls intended to fix fruit prices."

According to Assemblyman Phil Isenberg, Democrat of Sacramento, "It appears there is an effort under way to sneak the most abusive practices of federal marketing orders into California to insulate supply controls from federal reform efforts."

Republican Assemblyman Ross Johnson of Fullerton warned, "In the wake of federal reforms, a group of commercial packers and growers has been trying to get the state of California to do what the federal government is becoming reluctant to do — enforce artificial limits on fruit supplies in order to fix prices. And it appears that steps are being taken in California to establish a state marketing order for plums to replace the abolished federal plum order."

The coalition favoring free-market fruit is a rare bipartisan group made up of Republicans, Democrats, charitable groups that want the poor to get healthy food at low prices, conservatives and libertarians who support a free market, and many free-market farmers who want nothing to do with a fruit cartel.

Johnson and Isenberg have introduced Assembly Bill 3794, which decries state market manipulations, which resulted in "the waste of thousands of tons of fresh fruit each year and denied low-income persons access to nutritious fruit" — and, we would add, cost consumers millions of dollars.

The bill was to be taken up today in the Legislature and mandates that the state "shall not prohibit or otherwise limit the sale of edible and fresh fruit." Unfortunately, other regulations and market distortions still are allowed. But AB 3794 is a start at cutting away government controls, and at least stops the destruction of perfectly edible food. AB 3794 is a fruit ripe for the plucking.

## EDITORIALS

# Nutty over fruit

**N**UTTY. What else would you call leaving tons of edible fruit to rot in San Joaquin Valley orchards? Big agribusiness calls it marketing. Agriboss backers sell it as consumer protection. We say it's a ruse and criminal, to boot.

So do Assemblymen Ross Johnson, R-Fullerton and Phil Isenberg, D-Sacramento, who have moved to stop the mandated dumping of perfectly good small and imperfect fruit to force false market shortages. The two lawmakers' reasonable legislation, AB 3837, says: "The state shall not prohibit or otherwise limit the sale of edible and fresh fruit except as necessary to protect the public health."

The bill made it to the Assembly floor last week, but legislators couldn't reach a consensus on whether to allow consumers to decide if they want to pay more for cosmetically perfect fruit or opt for (just as nutritious) smaller sizes. Clearly there's a market for both.

What Californians won't buy, however, are thinly veiled manipulations that cram controls down our throats while snatching fresh, healthful food from the mouths of the state's poor children, and further fix prices by plowing under competition from small, independent growers.

■ **HOW YOU CAN HELP:** Assemblyman Paul Horcher, R-Diamond Bar, is the only area legislator to vote against this amendment to the state code. Call him at (818) 967-5299 and tell him "Yes on AB 3837" for consumer choice, cheaper fruit and free market competition.

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MONDAY, JULY 27, 1992

DEBRA J. SAUNDERS

## Petite Peaches Ban Is the Pits

**A**NYONE OUT there who does not believe government has gotten out of control ought to take a look at how Big Brother treats some little fruit. The U.S. Department of Agriculture supports a system that prohibits the sale of slightly petite peaches and barely under-sized nectarines; U.S. Attorney George O'Connell, acting as the fruit police, has filed a lawsuit demanding that one grower be fined \$100 per carton for any future sales of the wrong-sized fruit.

That grower, Dan Gerawan of Gerawan Farming in Reedley, says he has been forced to dump as much as 100,000 pounds of fruit per week since O'Connell filed papers on July 17 that prevented Gerawan from selling smaller peaches and nectarines to a wholesaler. The fruits' fault? They are a fraction smaller than the minimum size allowed by the Peach Commodity Committee and the Nectarines Administrative Committee.

### Feds' Forbidden Fruit

As a result, fruit for which Gerawan says he gets half the price per pound than what he gets for politically-correct sized produce, won't make it to the mom-and-pop stores that service low-income consumers in Southern California. Poor working families can expect to pay more for their fruit — and they can thank Uncle Sam for the privilege.

The specter of tons of fruit rotting roadside because of a ruthless growers' cartel has outlived John Steinbeck. Gerawan Farming donates produce to charities, but not all of it; few organizations have the resources to ship and store quantities of perishable food. Thus, Gerawan ends up feeding tons of fruit to the flies.



Besides, even if growers can create a silver lining by donating fruit to the needy, that doesn't justify a confiscatory policy. For government to tell growers that they can't sell perfectly good fruit is as unfair and arbitrary as telling homeowners — at the behest of real estate developers — that family members can't sleep in oblong rooms. Sure, some folks might start taking in the needy, but what right does government have to say something usable isn't?

And for what? USDA cheerleaders insist that the grower-dominated fruit-tree boards work for the consumer. USDA Senior Public Affairs Specialist Clarence Steinberg disagreed with the contention that size regulations are designed to limit supply, as critics charge. "It's not a volume control. It's a control of quality," he said. And: "When inferior product hits the market ... you threaten the integrity of future purchases."

Gag me with a goat cheese. If consumers don't like minute fruit, no problem, they won't buy them. What's more, the fact that Georgia peaches can be smaller than California peaches illustrates what a sham the fruit committees' so-called insistence on quality for quality's sake, not supply reduction, is.

Be real; these ag boards are no consumer unions; they're clubs for moneyed interests manned by bureaucrats with marching orders antithetical to the free market. "This system is basically bureaucrats pulling a number out of a hat and jamming it down the farmers' throats," James Bovard, Cato Institute associate policy analyst and author of "The Farm Fiasco," noted last week.

It's downright un-American and inconsistent to boot. Taxpayer dollars urge folks to eat fruit, then taxpayer dollars prosecute growers who don't destroy fruit a fraction of an inch too small.

When you think about it, these ag boards stand for everything Republicans are supposed to oppose. They stifle the free market, limit consumer choices and are confiscatory and intrusive. And such committees should be anathema to Democrats who believe government should stand for the consumer, not the cartel.

### Save the Baby Fruit

It's time to get big government off the backs of little fruit. Gerawan has appealed to Vice President Dan Quayle's Council on Competitiveness to fight the USDA. Quayle should heed this call, if only because the issue provides him with an opportunity to show America that there are edibles he can spell.

"Do I dare to eat a peach?" the overly circumspect J. Alfred Prufrock asked in the T.S. Eliot poem. The compassionate Californian would have to respond: Egads, no, Prufrock. Buy the wrong peach and some poor soul in overalls (or agribusiness chic) might find himself downwind of the U.S. attorney.

## Seastrand bill would help make edible fruit available to the needy

3293

Assemblywoman Andrea Seastrand (R-Pismo Beach) says that edible fruit should not be thrown away. There are people who need it, she says.

To that end she has co-authored legislation to prohibit the State from making it illegal to sell edible fresh fruit. The measure, AB 3794, is supported by a coalition of consumer groups, farmers and low-income food distribution organizations.

"Every year millions of tons of small edible fresh fruit are destroyed as the result of various agricultural marketing regulations," Seastrand said. "Under current law, it is illegal to sell or even donate this fruit to anyone."

"Access to fresh fruit is crucial for good health. If farmers have a market for smaller, less expensive fruit, the government has no business prosecuting them for selling it," Seastrand continued. "It is unconscionable that government regulations would deny low-income people — or anyone else — access to less expensive edible

fresh fruit. AB 3974 will ensure these abuses will not occur in California."

The bill is presently awaiting its policy committee assignment by the Assembly Rules Committee.

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Allen's P. C. B. Est. 1888

# Strange fruit in Assembly

Parents often scold their children for wasting food. Kids around the world are starving, the grown-ups say. Finish your sandwich.

That's pretty much what 26 state Assembly members — including Robert Frazee, R-Carlsbad, and Jan Goldsmith, R-Poway — were saying to the California fruit industry when they voted to allow ugly-but-nutritious fruit into the marketplace.

However, the state's farming industry prevailed, gathering sufficient votes in the Senate to puree Assemblyman Ross Johnson's ugly fruit bill.

The gorgeous produce in California's grocery stores do not appear by accident. A variety of fruit — cantaloupe, cling peaches, pears, strawberries and plums — are subject to strict market standards. If they are too small or too speckled or not colored right, they can't be sold. According to Johnson, R-Fullerton, "thousands of tons of wholesome, edible fruit is rotting in fields."

Interestingly, oranges — the golden

symbol of California — are excluded from market rules. Consumers pass over — or buy — unsightly oranges without any noticeable drop in the prestige of the state's produce.

However, opponents to Johnson's bill sounded the theme that urban legislators don't understand how much the produce industry depends upon aesthetics. "This is a bad, bad bill that will cripple an important industry in California," warned Assemblyman Rusty Areias, D-San Jose.

Actually, the banning of ugly-but-nutritious fruit is a blatant price support system that guarantees handsome profits for big, successful growers.

For consumers who are perfectly capable of deciding what kind of produce they want to buy and at what price, marketing standards based on aesthetics are the pits.

Johnson has asked for a second vote on the bill when the Assembly returns in August. This time, his resolve should bear fruit.

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Daily Times Advocate)  
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TUESDAY

JULY 28, 1992

# Los Angeles Times

CALIFORNIA & CO. / DANIEL AKST

## Why the Golden State's Fruit Laws Are the Pits

**S**ell a nectarine, go to jail. Well, not exactly. But the federal government is suing a Fresno-area grower for selling peaches and nectarines a fraction of an inch smaller than the legal minimum. The buyers in this case were wholesalers who apparently resold the fruit to mom-and-pop grocery stores in central Los Angeles.

Yes, it's those pesky agricultural marketing orders again. You know, the ones that keep healthful fruits and vegetables off the market, prop up prices and help rich growers keep down the competition.

It's a big year for California tree fruit, but the grower-controlled Nectarine Administrative Committee (and a similar peach panel) are up in arms because the marketplace has brazenly stuck its nose into the tent of California agriculture.

Empowered by Depression-era federal legislation, the committees set minimum size standards, among other things, for California-grown peaches and nectarines going to market. The boards say the idea is to maintain quality standards, but it's also a handy way to control supplies. Because of the size rules, millions of

perfectly good peaches and nectarines are left to rot every year. The pits are ground into paving material.

Since virtually the entire U.S. nectarine crop is grown in California, this is a big deal. Legal "sizism" means that less fruit gets to the stores, which in turn means higher prices for the fruit that does get there. Ultimately, consumers are deprived of choice. Worse yet, poor people are deprived of an affordable way to get some of the foods now considered important in quantity for a healthy diet.

**E**very now and then, some brave grower suicidally bent on (gasp!) selling his produce, bucks the system and gets into trouble. Carl Pescosolido, an Exeter, Calif., orange grower, has waged this battle for years, at great personal expense.

In what Dr. Watson might have called The Case of the Undersized Tree Fruit, Gerawan Farms of Reedley, Calif., had the temerity to sell some small peaches and nectarines to wholesalers at the Los Angeles Terminal Market.

Small fruit isn't poisonous; it's just cheaper. There's no evidence  
**Please see FRUIT, D3**

.....CONTINUED ON REVERSE →→→

# Wilson still waffling on fruit

For more than a decade, Republican administrations in Sacramento and Washington have stood for deregulation. They loosened controls on everything from airlines to banks to telephone communications.

Meanwhile, California farmers have long griped that regulating their activities, including pesticide use, increases costs to them and consumers.

So why has Pete Wilson's administration been thinking seriously of installing quality control regulations on plums produced in California, even though the federal government eliminated such regulations two years ago?

Solely because big farmers, ironically, now say they need regulation in order to survive.

They say regulating size and quality of the fruit they can bring to market will prevent a supply glut that would lower prices temporarily so much that many of them would be forced out of business. And they argue that controls aimed at keeping prices stable actually are good for supermarket customers in the long run, because they assure a continued fruit supply at reasonable prices.

Consumer advocates, meanwhile, argue that state regulation of fruit quality leads to a massive waste of food that could be eaten by low-income consumers or be bought up by food banks or agencies that assist the homeless. They say tons of edible, nutritious fruit is left on trees



**THOMAS D.  
ELIAS**

California columnist

or rots on the ground when size and quality rules apply.

Why would Wilson's administration get involved in this dispute?

The logical answer is money. Big agriculture in the Central Valley has long been the lynchpin of Wilson's campaign finances.

Of course, Wilson appointees vehemently deny that politics is involved at all in the possible plum rules.

"Farmers live from year to year and they worry that the price of plums will plummet to the point where they'll be forced to go out of business if undersized and blemished plums are allowed to go to market," says Carl DeWing, spokesman for the state Department of Food and Agriculture.

But DeWing also suggests contrarily that lower-quality fruit might not sell as well as produce that's up to standards, thus causing farmers to waste precious time and money.

"Why haul fruit to market if it's not going to sell?" he asks.

His arguments, of course, appear contradictory. If lower-quality fruit won't sell, it obviously won't pull down the price of high-quality produce. But if it does sell, then farm-

ers who bring it to market won't be wasting their time.

The reality is that without size and quality standards, competitive pressure by itself will decide which fruit sells and which does not. If consumers don't want lower-quality fruit, they won't buy it.

But prohibiting sales of such fruit can prevent the poor from getting any fruit at all, consumer advocates claim.

"Millions of Californians go to bed hungry every night," argues Harry Snyder, Western regional director of Consumers Union. "Creation of a state order to keep nutritious, but small or slightly blemished plums off the fresh fruit market is a scandal."

Not so, argues DeWing, who points out that hundreds of farmers donate inferior fruit to homeless shelters and food banks via the state's "Donate, Don't Dump" program.

But produce has been just as plentiful without regulation during the last two years as it was before, and farmers have not been driven out of business by the competition facilitated by the lack of size and quality rules.

The bottom line: There's an inherent inconsistency in the Wilson administration stance. The governor can't be for vigorous, even cut-throat, competition in businesses from airlines to telephones and against it in agriculture without raising eyebrows and suspicions of political favoritism.

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## Yes, we have no bananas

<sup>1402</sup>  
**W**HEN talking about the fruit business, the term "quality control" appears to be an oxymoron.

After all, only in the fruit industry could dumping millions of tons of perfectly good apples, oranges or any other fruit be considered for the good of the whole.

That may soon be coming to an end. A controversial bipartisan bill (AB3794) introduced by state Assemblymen Ross Johnson, R-Fullerton, and Phil Isenberg, D-Sacramento, would prohibit the use of fruit dumping for the purpose of ensuring "quality."

Fruit growers hate this bill. They say it will create undue economic pressures that could result in the destruction of the small farmer. They contend that it benefits the large fruit growers at the expense of the small.

Proponents of the bill hail it as a way to provide more fruit at a lower cost.

According to the state Department of Food and Agriculture, "quality standards" needed to be implemented to ensure the consumer would be receiving the best fruit

available.

But that can be read in two ways: Imposing quality standards could mean that the government — in this case the state — is withholding certain sizes of a particular fruit to increase profit. It can also be inferred that the government is in cahoots with powerful fruit growers in an effort to fix prices.

Destroying any amount of fruit creates a false picture of supply and demand. For instance, if more plums are available than the set amount growers allow onto the market, the overall price of plums would decline. And anyone who has taken Econ. 101 knows more product means less profit.

The history of fruit control regulation goes back to the Great Depression, when size standards were set.

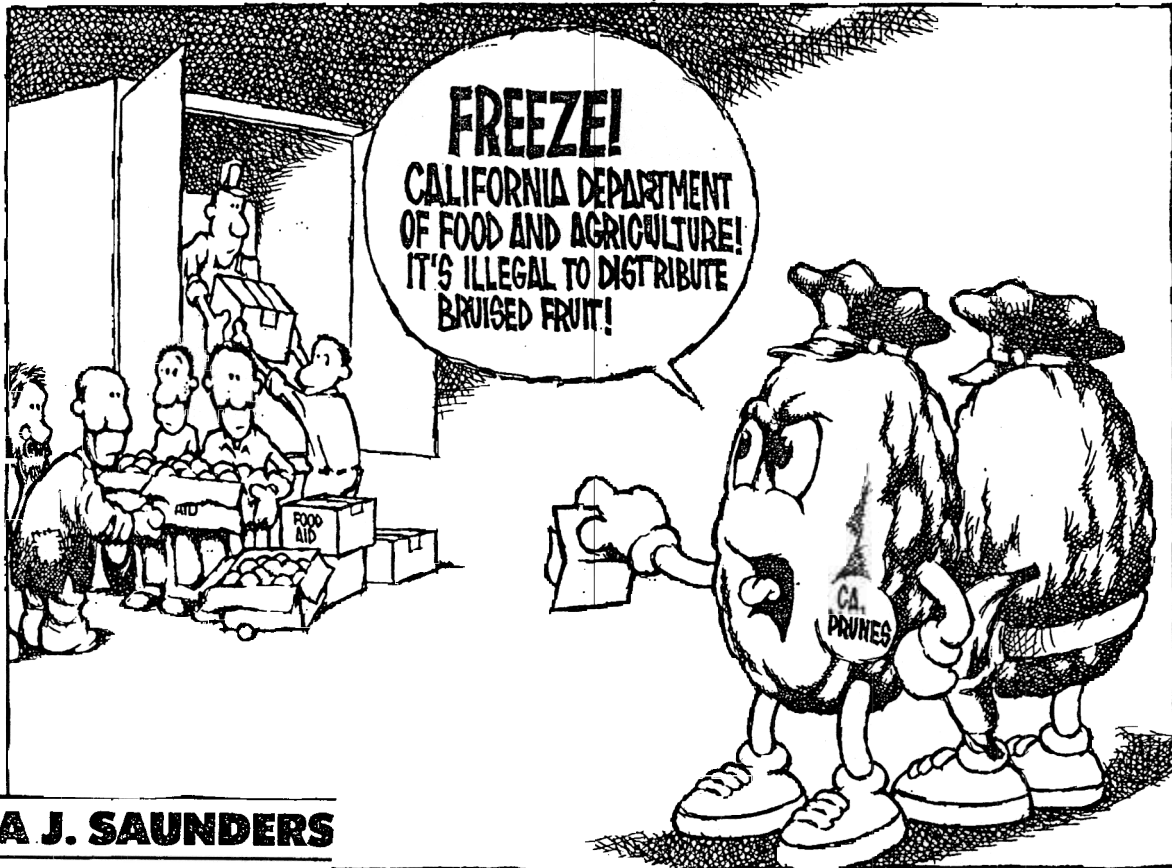
AB3794 should be supported on many levels, the first being to defeat the notion of keeping food off the market. To do so would accomplish little more than make fruit growers a bit richer (there have been estimations that 500 million nectarines grown in California will be purposely kept off of the market this year). Fruit dumping — especially done under the guise of controlling "quality" — is capitalism at its worst.



# San Francisco Chronicle

NORTHERN CALIFORNIA'S LARGEST NEWSPAPER

MONDAY, AUGUST 8, 1994



**DEBRA J. SAUNDERS**

## Felonious Fruit

**C**ALL SECURITY. Today the Legislature reconvenes.

Whether Capitol pols will continue to act as handmaidens of moneyed interests or whether they will play the part of public servants can be scrutinized by how they handle two bills, Assembly Bill 3837 and Assembly Bill 221.

AB 3837, by Assembly members Ross Johnson, R-Fullerton, and Jackie Speier, D-South San Francisco, would prohibit state marketing orders — that is, state-sanctioned cartels — from prohibiting the sale of fresh fruit “except as necessary to protect the public health.” The bill garnered 35 aye votes to 25 nays, but failed to win the necessary two-thirds approval in July. A reconsideration vote on the measure is expected this week.

Two questions you have to ask: First, why would any Democrat, who is supposed to be pro-consumer, vote against a measure that, according to Consumers Union West Coast Regional Director Harry Snyder, should lower the price of fruit and “end the waste of 52 million pounds of rotting plums”?

Readers might care to ask Democrat Assembly members Vivien Bronshvag at (415) 479-4920, Valerie Brown at (707) 546-4500, Sal Cannella at (209) 669-6115, or Rusty Arellas at (408) 422-4344, who voted against the measure. Readers also may want to inform these members that they do not enjoy paying higher fruit prices because a special interest knows how to get its way in Sacramento.

Question No. 2: Why should any Republican, who is supposed to believe in the free market, vote against government regulations that dampen competition?

Readers may care to ask GOP Assembly members Dean Andal at (209) 948-7479 or Bruce McPherson at (408) 425-1503, who voted against the bill, or Chuck Quackenbush at (408) 369-8170 or Richard Rainey at (510) 933-9196, who did not vote. Readers may wish to express their sentiments about paying higher fruit prices and urge these members to put their constituents' interest in a free market before the profit interests of some agribusiness concerns.

Also, feel free to share your opinion with Governor Wilson, whose Department of Food and Agriculture threatened to fine

Fresno County grower Dan Gerawan up to \$2,500 for every box of small plums sold by Gerawan Farming Co., also an agribusiness concern. As a result, Gerawan has stopped selling his little fruit at a cut rate. Some victory.

You can register your opinion with the governor at (916) 445-2841. You may want to let the gov know that selling nutritious fruits that are small or blemished at discount prices shouldn't be a crime.

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PETER H. KING  
ON CALIFORNIA

## Contraband That Grows On Trees

REEDLEY

A thin young man in Ralph Lauren denims beckoned with a nod of his head toward the back stairs. I followed him up to an empty office. He closed the door behind us and told me to have a seat. I sat. He moved behind a conference table and pushed a box toward me.

On the white carton, printed in crayon and with what appeared to be a child's hand, were these words: "Happy Fruit." Pretty clever, I thought. He fingered the lid and looked me over again. We had not met before. Maybe he was having second thoughts. In his field, the feds are everywhere.

"I have to warn you," he said. "What's in this box here is an illegal substance. I don't know how you feel about being in the room with it."

I assured him I understood the risk. I had not driven this deep into the San Joaquin Valley on a hot July day to turn back now. He opened the box. Stacked neatly inside were 80 firm, red peaches. But not just any peaches. These peaches were illicit peaches, contraband, a shade too small to be sold legally through standard channels. Dum de dum dum.

□

His name is Dan Gerawan. He is the 30-year-old son of an up-from-the-bootstraps tree farmer on the valley's lush east side. Young Gerawan runs the packing side of the family business, one of the largest stone fruit operations in the land. We all have our demons, and for Gerawan it's a hellbent desire to sell undersized but edible peaches, rather than plowing them underground.

"I began working in packinghouses when I was 11," he said, "and I saw from the start how wrong a lot of this stuff was." By "this stuff" Gerawan refers to a provision of a federal marketing order that allows California grower committees, through the U.S. Department of Agriculture, to set minimum size requirements for peaches.

Such marketing orders date back to the Great Depression, when they were instituted to help struggling farmers. About 40 remain in effect—providing producers of various crops with collective authority needed to control quality, promote their product, and fight for retail shelf space. That's the charitable view. The less charitable view is that they run counter to free enterprise principles, letting farmers inflate prices through supply control. Supply control is a fancy term for plowing edible fruit underground.

Under the peach marketing order, Gerawan has only a few legal options for disposing of small fruit, which constitute anywhere from 5 to 10% of his family's crop. He can sell them at roadside stands. He can donate them to charity. Or he can feed them to cattle or plow them under. What he cannot do is market them, which is precisely what he intends to do.

□

Last year, he made a splash by arranging for small peaches to be sold in mom-and-pop stores in South Los Angeles. The feds protested and Gerawan backed down. This year he has a different scheme: Under a newly created Happy Fruit label, the smaller peaches will be sold through grocers—but with all profits designated for the Pediatric AIDS Foundation of San Francisco.

He is not sure this is legal, but he suspects it is not, and he is secretive about just which stores will carry Happy Fruit. He is not sure what USDA officials will do about it, but he hopes they won't arrest him. He also is not sure what the people at the Pediatric AIDS Foundation think about participating in a peach war; he didn't bother to ask. His assumption, though, is that his adversaries will be reluctant to go after someone raising money for children with AIDS.

His critics call him cynical, publicity hungry and maybe greedy, suggesting that his larger motive is to drive out smaller growers who would fail without a marketing order. Gerawan insists it's all quite simple. "The bottom line," he said, pointing to the box, "is that this is high-quality fruit and I want to sell it."

But not to me. When I asked if I could buy the box, he hemmed and hawed. "You don't know who to trust," one of his associates said, half-laughing. Just in case I was an undercover agent, I suppose, they insisted on giving me the box. Nothing illegal there. And I didn't care. I was curious how the forbidden fruit would taste. The first peach I ate right away, while still in Gerawan's parking lot. It wasn't bad. No. 2 was better, sweet and firm. No. 3 was sublime. Halfway home I was wondering where I might score another box.